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Director's Decisions for California

Desert Lands

1951-1959

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Sacramento
041361 etc.
"AD:CRD"

March 28, 1951

DECISION

041361	William W. Wood	:	
041398	James E. Malone	:	
041994	Wesley C. Duncan	:	
041995	Leonard B. McDonald	:	
042059	Sidney L. Myrick	:	
042118	William M. Collins	:	
042119	Dude Lancaster	:	
042120	Babe Bowen	:	Desert and homestead applications
042121	Daniel F. Myrick	:	
042143	Elmer J. Jenkins	:	
042408	Gertrude Moss	:	
042409	George B. Moss	:	
042410	G. B. Moss	:	
042437	Clinton C. Mills	:	
043219	Mary A. Mills	:	

Actions of Manager Affirmed

Appeals have been filed by the above named parties from decisions of the Manager at Sacramento dated October 20, 1950, November 16, 1950, November 30, 1950 and December 11, 1950, rejecting in whole or in part the listed applications involving lands in Fish Lake Valley, California.

The facts presented in the appeals and the reports of field investigations concerning Fish Lake Valley have been carefully considered and it is the opinion of this office that the majority of the lands involved in the instant cases are of poor agricultural quality and could not be expected to support a sound agricultural enterprise even if irrigation water was much cheaper and more abundant than it is. Some of the lands involved, though of fair agricultural quality, are so located as to require pumping lifts well in excess of the 100-foot maximum that has proven practical in comparable areas. The water requirements of the total area applied for in this valley are many times as great as the estimated quantity of available water. In fact, the water requirements of the applications upon which favorable action is contemplated are considerably above the water available

under the present climatic conditions and represent the maximum withdrawal from ground water estimated to be available from normal supplies without serious depletion.

The waters of Fish Lake Valley, both surface and sub-surface, originate entirely within the valley and cannot be supplemented from any presently known outside source. Methods of artificially diverting surface waters to sub-surface storage are available through which it is estimated that present normal run-off waters may be utilized as a safety factor to augment normal sub-surface storage in periods of drought sufficient to meet the requirements of lands in the applications upon which favorable action is contemplated, but this possible diversion does not constitute a source of water warranting approval of the additional applications listed herein.

While it is recognized that some of the lands involved in these appealed cases, if judged by soil type alone, could be considered more suitable for agricultural development than some of the lower lying lands involved in applications upon which favorable action is contemplated, the soil factor alone is not sufficient to overcome the relative disadvantage of the high pumping lift necessary on these lands. Aside from the fact that all known available waters are obligated by more favorably situated lands in this valley and covered by applications upon which favorable action is proposed, there must also be considered the handicaps of the area with regard to high elevation, short growing season, erosion hazard, low organic matter reserves and distance from market.

Since all of the applications for homestead and desert entry filed for lands in this area could not be accommodated because of the water resources available, the number of such applications upon which favorable action can be taken is limited to the capacity of such resources taking into consideration the best or most favorably situated lands which will serve to minimize as far as possible unwarranted expenditures of time and money.

In view of the above, the decisions of the Manager set forth in paragraph one hereof are affirmed and such actions will become final after 30 days from receipt of notice hereof by the parties interested in the absence of appeals to the Secretary of the Interior.

Marion Clawson

Director

copy to: Manager 15
R. A. Reg. II

Smg.
R.C. McC

Land (Genl) 2
Adjudication

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT Los Angeles 091625 LUD:FF
Washington 25, D.C.

November 6, 1952

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DECISION

Marvin O. Farley : Desert Land Application

Action of Manager Affirmed

Mr. Farley has appealed to this office from a decision of the Manager of the Land Office at Los Angeles, dated January 3, 1952, rejecting his desert land application because the land is in a material site and cannot be deemed to be vacant and subject to appropriation under the public land laws.

However, our records show that the land in issue has been withdrawn for reclamation purposes since January 31, 1903 and still is withdrawn for reclamation purposes. The withdrawal precludes the appropriation of the lands. George D. McGhee, Allen C. McGurk, A-26325, February 15, 1952.

Accordingly, the rejection of the application by the Manager is affirmed subject to the right of appeal to the head of the Department within 30 days from service of notice. If an appeal is filed, it must conform to the requirements of 43 CFR 221.75 and 221.75 (Circular No. 1818, attached). If no action is taken by the party within the time allowed, the case will be closed without further notice.

William Pierce
Assistant Director

Copy to: All Regional Administrators

All Managers, Land and Land
and Survey Offices

Registered to:

Mr. Marvin O. Farley
P.O. Box 344
Holtville
Imperial County
California

In reply refer to:

Los Angeles 094648- 1/
5.04g

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DEC 12 1955
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 10, 1955

DECISION

Avis A. Petersen, et al- 1/ : Desert Land Applications

Appeals Dismissed

On June 5, 1952, and subsequent dates, the Manager of the Land Office at Los Angeles, California, held the Desert Land Application filed by the appellant herein and eleven others, shown on attached Schedule "A", for rejection. All of the land described in the applications are located in Johnson Valley in the State of California.

From this decision the appellants enumerated on Schedule "A" filed appeals to this office. While the appeals were pending another field examination was made and a report dated August 27, 1954, was submitted.

Based upon this report all or portions of the land described in the respective Desert Land Applications of the appellants herein were held for allowance and each appellant or his attorney of record was duly notified.

Appellant Avis A. Petersen on February 21, 1955, and the other appellants on various dates accepted the findings of the Manager with respect to their respective applications and withdrew their appeals.

Appellants, Glen I. Gipson and James D. Garrett, did not file a withdrawal of their appeals. Since all the land described by each of these applicants has been classified as suitable for disposition under the desert land laws, each of such applications is allowable in toto and the appeals become moot.

Accordingly, the appeal filed by Avis A. Petersen, and the appeals filed by the appellants listed in Schedule "A" are hereby dismissed and the cases are returned to the Land Office at Los Angeles, California, for further disposition in accordance with the governing regulations.

For the Director:
A. H. Furr

Attachment

Copy to: AO-1
SO(Calif.)-(3)
LO(Los Angeles)-(3)
Lands Staff Officer (2)
BLM Reading File; AU (12); Attys' Reading File; Each case file; FSRD; HSP
Gomer and Himmelfarb, Attorneys Each LO-3; Each SO-3; AO

1/ See Schedule "A" attached

Schedule "A"

All serial numbers pertain to the Los Angeles Land Office -

Serial Number	Name
4/ 094860	Frances J. Clark
094643	Lester E. Hix
094646	Mary Ann Hix
094647	Wallace J. Petersen
094862	George Gordon Stewart
4/ 3/ 094935	Mildred A. Stewart
2/ 095111	Glen I. Gipson
4/ 095250	Donald L. Pender
4/ 096538	Clifford K. Clark
4/ 2/ 097216	James D. Garrett
4/ 098510	Willie E. Matthews

2/ Did not withdraw appeal, but applications are allowable for all lands described therein.

3/ Withdrawal of appeal filed with 094862.

4/ Represented by Gomer and Himmelfarb, Attorneys.

In reply refer to:

Los Angeles 0112799
5.04g

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 19, 1955

Registered Mail
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DECISION

Verla Grow Smurthwaite : Desert Land Application

Manager's Decision Affirmed

This is an appeal from the Manager's decision of April 23, 1954, rejecting appellant's application for desert land entry filed March 29, 1954, to the W½ sec. 31, T. 5 S., R. 23 E., S.B.M., California, because the land involved was in a First Form Reclamation Withdrawal.

Through her attorney, Robert Rees Dansie, Mrs. Smurthwaite alleges that the land is restored because the Bureau of Reclamation signed an Order of Revocation which was forwarded to the Bureau of Land Management November 20, 1953.

A check of the records in the Bureau of Land Management reveals that the Order of Withdrawal, dated February 19, 1929, in connection with the Colorado River Storage Project, is still in effect and awaiting field report which is expected shortly.

Since the land involved is still within a reclamation withdrawal and is not subject to entry under the Public Land Laws, the application for desert land entry must be rejected. Jack D. Watts, A-26488 (November 18, 1952); 43 CFR 230.12.

If and when the withdrawn land is restored, it will be subject to veterans' preference rights. (43 U.S.C. 282, as amended by Public Law 402, 83d Congress, approved June 18, 1954).

The Manager's decision rejecting the application was proper and is hereby affirmed.

This decision is subject to appeal to the Secretary of the Interior within 30 days from receipt hereof. If an appeal is filed,

it must conform to the provisions of 43 CFR sections 221.75 and 221.76. See Circular No. 1818 attached.

For the Director:

A. H. Zinn

Attachment

Copy to: Mr. Robert Rees Dansie, Atty. for Appellant (Registered Mail)
Verla Grow Smurthwaite (Regular Mail)
Each AO (1)
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Case File
BLM Reading File
FSRD
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0108489
0108490
5.04g

January 6, 1956

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DECISION

O. D. Brown
Effie Grace DeLaunay

Desert Land Applications

Decisions of Manager Affirmed

The above applicants have appealed from the decisions of the Los Angeles Land Office Manager, dated July 16, 1954, rejecting their desert land applications for the lands described therein on the grounds that the soils are coarse with low fertility and cannot be cultivated without excessive use of water duty; that the lands are in an area in which the water supply is critical; and that the excessive use of water required for irrigation of the inferior soils is not economically justified.

Both applicants present identical appeals in which they allege that according to reports of certain ranch owners in the area the soil in question is of sandy loam and clay, that water can be obtained for irrigation, and that other lands in the general area have produced 350 sacks of potatoes per acre.

The field report indicates that the information given to applicants by the neighboring ranchers is promotional since both of the ranchers are in fact absentee land owners. It also, after exhaustive study, states that Fish Lake Valley is an interior arid desert basin having an elevation of approximately 5,000 feet and an annual precipitation of 5 inches or less; the area is subject to wind erosion; the soil is void of organic matter and drainage is excessive; that the lands are in an area in which the water supply is critical; and excessive use of water because of the inferior soil is not economically justified.

The appeals filed by appellants contain no positive factual information which would controvert the facts presented in the report of field examination.

The lack of an adequate and permanent water supply for irrigation is a proper basis for rejecting an application for

desert land entry, since the primary purpose of the Desert Land Act is to effect the reclamation of the land. (43 U.S.C., 1952 ed., sec. 321). See also Faye K. Konicek, A-25902, August 21, 1950; Helen C. Smith, et al., A-26968, decided March 4, 1955; William E. Gelden, A-27084, decided April 12, 1955. Also the allowance of the appellants' applications would aggravate a critical water situation in Fish Lake Valley. cf. Joe B. Forehand, et al, A-26693 decided December 19, 1954.

For the above reasons, the decisions of the Manager are affirmed. Appellants have a right of appeal to the Secretary of the Interior within 30 days of receipt of notice herein. If an appeal is filed it must comply to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818 attached.

For the Director

A. H. Furr

Attachment: Circular 1818

Distribution:

Each Appellant (Registered Mail)
Each AO
Each SO (3)
Each LO (e)
Lands Staff Officer (2)
Case files
BLM Reading File
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In reply refer to:

Los Angeles 0105541 et al
5.04g

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Washington 25, D. C.

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January 17, 1956

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DECISION

Ruby D. Moore, et al : Desert Land Applications

Manager's Decisions Affirmed

The parties listed in Appendix "A" attached hereto, have appealed to this office from the decisions of the Manager of the Los Angeles Land Office, which rejected their desert land applications. Rejections were based on the findings that the water supply is insufficient for permanent reclamation of the lands involved and/or that the lands described are topographically unfit for cultivation, failing to meet the requirements of the desert land law, that 1/8th of every smallest legal subdivision be suitable to cultivation.

The decisions are based on an area field report dated October 21, 1952, covering over 15,000 acres of the public land. The 36-page report, with maps, deals in detail with the lands involved in each appeal.

The report reveals the land involved in the following appeals have soils ranging from excessively sandy to gravelly and rocky, which render them unfit for cultivation.

L.A. 0131512 - Charles V. Thomas

S½ sec. 6, T. 19 N., R. 12 E., S.B.M., embracing land in formerly rejected desert entry, 091368, Ted Falasco.

L.A. 0131513 - George R. Green

N½ sec. 7, T. 19 N., R. 12 E., S.B.M., formerly rejected entry for same land, L.A. 091369 of Martin Erreca.

L.A. 0131505 - Howard Bob Roberts

$N\frac{1}{2}$ sec. 17, T. 19 N., R. 12 E., S.B.M., formerly rejected entry for same land, L.A. 091362, Ida M. Erreca.

L.A. 0131504 - Joe Abel

$N\frac{1}{2}$ sec. 6, T. 19 N., R. 12 E., S.B.M.,

L.A. 0131510 - Eugene E. Williamson

$S\frac{1}{2}$ sec. 29, T. 19 N., R. 13 E., S.B.M., formerly embraced in rejected desert land entry 091829, of Edna E. Drake.

L.A. 0131883 - Roderick H. Rose

$NW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}NE\frac{1}{4}$, sec. 28, T. 19 N., R. 13 E., S.B.M.

The above appellants contend that by operating as a group, they can reclaim the land at a cost of about $5.00 per acre; that contrary to the field report, some of the land is "remarkably level and completely suitable to farming." Appellants assert their geologists John Way of Beatty, Nevada, finds ample supply of water for drilling wells, and a soil analysis by Thomas De Brun of Las Vegas, shows the soil to be "exceptionally fertile." The reports, however, are not produced in evidence. Reference is also made to L. C. Houk, whom it is claimed, drilled several wells throughout the valley, producing from 1100 to 1500 gallons a minute.

The report further reveals that the following appeals are in an area of critical water supply:

L.A. 0105810 - Charles A. Harris

$W\frac{1}{2}$ sec. 34, T. 20 N., R. 12 E., S.B.M., for same land as prior rejected desert entry, 092303 Ramon J. Bon.

L.A. 0105541 - Ruby D. Moore

$W\frac{1}{2}$ sec. 34, T. 20 N., R. 12 E., S.B.M., conflicts with 0105810, above.

L.A. 0124627 - Leona Stone

$E\frac{1}{2}$, (Lots 7, 8) sec. 21, T. 19 N., R. 13 E., for same land as prior rejected desert land applications of John E. Turner, 094363, and Morris Abrams, 095356.

L.A. 0121691 - Josephine Morris

N½ sec. 18, T. 20 N., R. 12 E., S.B.M.,
for same land as rejected desert land application of Zollie Moore, 091622.

L.A. 0116221 - Allen Ashdill Peterson

N½ sec. 32, T. 20 N., R. 12 E., S.B.M.,
for same land as rejected desert land application of Verna V. Houk, 091623.

All of the above appellants allege with considerable confidence, but no factual proof, that "there is sufficient water supply to economically cultivate all of the tillable, irrigable land in Mesquite Valley," and refer to the operation of Loren C. Houk, who admittedly has drilled several producing wells in the nearby area.

The field report bases much of its finding on a report of the U. S. Geological Survey in cooperation with the Department of Engineering of the State of California.

Aside from adverse topography and soil, each of the appellants contemplates irrigation from deep wells which will make underground sources available since there is a total absence of surface waters in Mesquite Valley.

The few irrigation wells presently operating do not indicate that the water supply is either abundant or unlimited, and appellants' assertions as to topography of the soil and sufficiency of water supply in the areas embracing the land applied for are not such evidence as to overcome the findings in the field report.

The Department has held that it is proper to refuse to classify land for desert land entry when the existence of an adequate supply of irrigation water is not shown, - Melvin W. Westwood, et al., A-26751, A-26752 (August 20, 1954), or that the allowance of entries would aggravate an already serious water situation. Joe B. Forehand, et al., A-26693, et al (December 9, 1954).

This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of same. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818, attached.

For the Director:

A. H. Trow

Attachment

(See next page for distribution).

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APPENDIX "A"

Name of Applicant	Serial No.	Type of Application
Ruby D. Moore	L.A. 0105541	Desert Land
George R. Greene	0131513	" "
Charles V. Thomas	0131512	" "
Eugene E. Williamson	0131510	" "
Howard Bob Roberts	0131505	" "
Jo Abel	0131504	" "
Leona Stone	0124627	" "
Josephine Morris	0121691	" "
Allen Ashdill Peterson	0116221	" "
Charles A. Harris	0105810	" "
Roderick H. Rose	0131883	" "

APPENDIX "A"

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 0129037
et al
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MAR 13 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5

February 10, 1956

DECISION

Louise E. Safarik, et al

Desert Land Applications
and Homestead Application

Manager's Decisions Modified
Cases Remanded

Louise E. Safarik, among others listed in Schedule "A" annexed, have appealed to this office from the decisions of the Manager of the Land Office at Los Angeles, California, rejecting their respective applications for entry for lands under the Desert Land Act or the Homestead Act, located in the Mojave Drainage Basin in San Bernardino County, State of California.

All of the vacant, unreserved and unappropriated public land in California was withdrawn from settlement, location, sale or entry and reserved for classification by Executive Order No. 6910, dated November 26, 1934.

Lands withdrawn under this Executive Order which are sought to be entered under the desert-land law or the homestead law must first be classified for entry under those laws.

The applications noted in Schedule "A" lie either in T. 8 N., R. 4 W., or T. 9 N., R. 4 W., S.B.M., and were rejected by the Manager based upon either one or all of the following reasons as indicated by the following numbers after each appellant's name in Schedule "A".

1. NO WATER. The land described is known to have no water available in sufficient quantity for irrigation. None of the area receives sufficient precipitation to permit cultivation without artificial irrigation. Geological evidence and information relative to underground conditions obtained during the drilling of many wells, discloses that ground water is either absent or in insufficient quantity for irrigation. This is due to the fact the land is outside the zone of influence of the Mojave River seepage waters and that the watersheds of the vicinity are too arid to contribute to local ground water reservoirs.

80

2. SOIL UNFIT. The land described consists of soil that is unfit for cultivation and is thereby disqualified from classification under the agricultural public land laws. This adverse soil consists primarily of excessively heavy clay, highly charged with alkali salts, unsuitable for agriculture from both a physical and chemical standpoint. There is also an absence of sub-surface drainage which causes further deposits of alkali under irrigation.

3. TOPOGRAPHICALLY UNFIT. The land described is topographically unfit for cultivation, thereby being disqualified from classification under the agricultural public land laws.

The report covers an area of approximately 100,000 acres in Tps. 3 - 14 N., Rs. 1 - 7 W., and 1 - 9 E., and was the basis for the Bureau's decision of October 31, 1955, affirming the Manager's decisions of rejection in 103 cases.

However, in the ten cases listed in Schedule "A" each of the appellants has produced specific evidence contrary to the field report.

Two of the appellants were rejected for all three of the reasons given supra and eight of the appellants for the first reason only.

In all of the appeals V. L. Cameron and/or G. W. Tweeddale, hydrologists, contend that the lands involved can be irrigated successfully by drilling wells to a depth of 500 feet. A point not covered by the field report, is advanced by V. L. Cameron, Hydrologist, who states:

> "This desert is faulted in many directions by earth faults, some parallel to the San Andreas and the underground Mojave, some radiating from it at various angles. These faults run from 40 to 50 feet wide to several hundred, and they are filled with volcanic or primary water springs coming up through the faults from steam generated deep in the earth and condensing on the way up, and they are also fed from the sides, by innumerable springs of the same character, though more isolated. These springs form streams which generally run from approximately 150 feet top to 400 bottom, though in some cases the water is moving at depths to 800 or more feet."

George W. Tweeddale, Hydrologist, study of the area involved in these appeals, in relation to the Helendale Basin, indicates that "* * * sufficient ground water can be developed for irrigation of the land provided that wells are drilled to the 500 foot level - this does not necessarily imply that deep pumping will be necessary, as sufficient hydrostatic pressure should develop at this point to maintain a high level of water in the wells."

Both these hydrologists have made examination of the lands applied for in each appeal whereas the rejections were based on a general overall report that lands in the same township and range and other townships and ranges "lie outside the zone of known underground water, either surface or subsurface."

Turning now to the two applications which were rejected for all three reasons noted supra. Appellants have submitted a soil analysis report made by George W. Gooch Laboratories, Los Angeles, California, showing the land to be of cultivable quality, together with evidence of sufficient water for irrigation. However, the evidence suggests that the land is more topographically suited to orchard crops than alfalfa or like crops which also would considerably reduce the water requirement.

All of the lands involved, according to the map submitted with the field report, lie close to the "zone of influence of the Mojave River, west of Iron Mountain and north west of the Helendale Basin."

Appellants' hydrologists claim that a considerable leakage from the Helendale Basin finds it way, first westward then northward, through the subsurface rocks to the general area of the lands involved in this appeal; and that bedrock restrictions to the north and west confine this water. Since the field report describes only in general terms the areas recommended for rejection and in view of the specific reports by experts of appellants that the land is cultivable under the desert land and homestead laws, the cases are remanded for further evidence specifically directed to each of the applications involved since reliance on the area report as a conclusive basis for classification of each of the particular tracts involved seems inequitable.

The Department has held that applications for desert land entry should be remanded for further field examination where there is insufficient evidence in the record regarding the suitability of the land applied for for agricultural development. Elmer Richard Wright et al., A-27020 et al (February 28, 1955); Charles C. Bogardus, A-27219 (November 23, 1955).

Accordingly, the cases are remanded to the Los Angeles Office for specific examination of the tracts sought by appellants and a reconsideration of their applications on the basis of such examination.

For the Director

A. H. Shur

Attachment: Schedule "A"

Distribution:

Each Appellant (Regular Mail)
Each AO
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
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Case files
FSRD
BLM Reading File
Attorneys' Reading File
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LO (Los Angeles) with the case records of the
14 applications listed in Schedule "A"

SCHEDULE "A"

List of appellants for Desert Land or Homestead Applications. All serial numbers pertain to the Los Angeles Land Office.

Serial No.	Name	Section
	T. 8 N., R. 4 W.	
0129037	Louise E. Safarik (1), (2), (3)	3
	T. 8 N., R. 5 W.	
0123132	Harry E. Moore (1)	31
	T. 9 N., R. 4 W.; T. 8 N., R. 4 W.	
0129335	Ernest G. Erickson (1)	35, 2
	T. 9 N., R. 4 W.	
0129686	A. T. Cassell, Jr. (1)	27
	T. 8 N., R. 4 W.	
0127712	Minnie J. Weeks (1), (2), (3)	2
	T. 9 N., R. 4 W.	
0129221	Kenneth W. Allen (1)	35
	T. 9 N., R. 4 W.	
0129688	Ernest W. Sawyer, Jr. (1)	22
	T. 9 N., R. 4 W.	
0129796	Robert H. Sawyer (1)	15
	T. 9 N., R. 4 W.	
0130398	Joseph LaCasella (1)	10
	T. 9 N., R. 4 W.	
0130397	Vito Bruno (1)	10
	T. 9 N., R. 4 W.	
0129843	Ernest W. Sawyer (1)	15

Serial No.	Name	Section
	T. 8 N., R. 5 W.	
0123131	Wilma B. Moore (1)	31
	T. 8 N., R. 4 W.	
090460 (Homestead Application)	William R. VeDel (2)	10
	T. 9 N., R. 4 W.	
0129687	George M. Sawyer (1)	22

In reply refer to:

Los Angeles 0130435 1/
0129590 2/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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SACRAMENTO, CALIF.
MAR 5 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

February 21, 1956

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DECISION

Constantine Androus et al 1/ : Desert Land Applications
Esther Smith et al 2/ :

Decisions of Manager Affirmed

Constantine Androus and others listed in Schedule "A" 1/ requested additional time to submit, with their respective appeals, proof that the lands described in their respective applications can be reclaimed. The time allowed to submit such proof has expired in each instance and no additional evidence furnished by the appellants.

Esther Smith and others listed in Schedule "B" filed appeals recently received in this office not included in the Bureau's decision of October 31, 1955. These appeals merely express an opinion or belief that the land can be reclaimed.

All the lands described in the applications lie within the Mojave Valley; the conditions in the appeals are identical to those discussed in the Bureau's decision of October 31, 1955, a copy of which is attached and made a part hereof. The October 31 decision is applicable to the lands under discussion on the appeals noted in Schedule "A".

The Manager's decision in each instance is therefore affirmed. Appellants have the right of appeal to the Secretary of the Interior within 30 days from receipt hereof. If an appeal is filed, it must conform to 43 CFR 221.75 and 221.76. See Circular 1818, attached.

For the Director:
A. H. Finn

Attachments 4

(See p. 2 for distribution)

1/ See Schedule "A" for names and serial numbers of 11 desert land entry appellants.
2/ See Schedule "B" for names and serial numbers of 9 desert land entry appellants who have offered no evidence refuting findings of Manager's decision dated October 31, 1955.

20

Distribution:

Copy to each app llant (Registered mail)
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Each case file
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Attorneys' Reading File
Appeals Unit (25)
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SCHEDULE "A"

List of appellants for Desert Land Applications. All serial numbers pertain to the Los Angeles Land Office.

Serial No.	Name	Time to submit addl. evidence expired
0130435	Constantine Androus	1/4/56
0122078	William L. Blythe	12/26/55
0122079	Mrs. Carol R. Blythe	11/16/55
0122084	Mrs. Alice M. Colliau	11/30/55
0122085	E. H. Colliau	11/30/55
0122927	Jack R. Walde	12/26/55
0122080	Mrs. Ruth L. Walde	12/11/55
0122347	Ingwald J. Walde	11/29/55
0122287	Newin R. Weber	11/22/55
0122286	Miss Edna Terry Weber	11/22/55
0130238	Evangele Koutsicas	11/30/55

SCHEDULE "B"

Appeals received not included in decision of October 31, 1955, in which appellants have offered no evidence or other data which refutes the findings of the Manager with regard to their respective applications. - All serial numbers pertain to the Los Angeles Land Office.

Serial No.	Name
0129590	Mrs. Esther Smith
0125397	Harry T. Booso
0125550	Maurice Shabazian
0129868	Robert R. Gaddis
0130054	Mrs. Gloria N. Iacoboni
0130055	Angelo M. Iacoboni
0102003	Mrs. Jane H. Voss
0102005	Carl P. Voss
095045	Jay O. Garland

SCHEDULE "B"

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:
Los Angeles 094365
097738
5.04g

October 31, 1955

Registered Mail
Return Receipt Requested

DECISION

James L. Mealey 1/ Homestead Applications 1/

Celia I. Cooper 2/ Desert Land Applications 2/

Decision of Manager Affirmed

James L. Mealey and Celia I. Cooper and 102 others have appealed to this office from the decision of the Manager of the Land Office at Los Angeles, California, rejecting their respective applications for entry for lands under the Homestead or Desert Land Acts located in the Mojave Drainage Basin in San Bernardino County, State of California.

All of the vacant, unreserved and unappropriated public land in California was withdrawn from settlement, location, sale, or entry and reserved for classification by Executive Order No. 6910, dated November 26, 1934.

Lands withdrawn under this Executive Order which are sought to be entered under the desert-land law or the homestead law must first be classified for entry under those acts. The decision as to whether lands applied for are classified as suitable for disposal under the desert-land or homestead laws or not at all remains within the discretion of the Secretary. Ernest C. DeFord et al., A-26591 (February 6, 1953).

Not all applications were held for rejection for the same reason by the Manager. Depending upon the location of the land described

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1/ See Schedule "A" for names and serial numbers of 10 Homestead Entry Appellants

2/ See Schedule "B" for names and serial numbers of 94 Desert Land Entry Appellants

in the particular application, the rejections were based upon either one, two or all of the following reasons:

1. NO WATER. The land described is known to have no water available in sufficient quantity for irrigation. None of the area receives sufficient precipitation to permit cultivation without artificial irrigation. Geological evidence and information relative to underground conditions obtained during the drilling of many wells, discloses that ground water is either absent or in insufficient quantity for irrigation. This is due to the fact the land is outside the zone of influence of the Mojave River seepage waters and that the watersheds of the vicinity are too arid to contribute to local ground water reservoirs.

2. SOIL UNFIT. The land described consists of soil that is unfit for cultivation and is thereby disqualified from classification under the agricultural public land laws. This adverse soil consists primarily of excessively heavy clay, highly charged with alkali salts, unsuitable for agriculture from both a physical and chemical standpoint. There is also an absence of sub-surface drainage which causes further deposits of alkali under irrigation.

3. TOPOGRAPHICALLY UNFIT. The land described is topographically unfit for cultivation, thereby being disqualified from classification under the agricultural public land laws.

The Manager's decisions were based upon information contained in an area report entitled Mojave River Drainage prepared in the field in 1934. From this report the pertinent facts appear as follows:

"The Mojave River drainage basin, one of the largest in the arid Mojave Desert region, emcompasses eight interconnected but physiographically distinct ground water basins. The principal basin is the Mojave Valley, and the others are subsidiary to it. They are: Harper Valley, Coyote Valley, Cronise Valley, Crucero Valley, Soda Lake Valley, Silver Lake Valley, and Mirage Valley. Most of the applications embrace lands in the subsidiary valleys where agricultural development is practically non-existant.

"The elevations of the several valleys vary from about 900 feet in Silver Lake and Soda Lake Valleys to about 3500 feet in the "Upper" Mojave Valley. The growing season varies from about 230 to 240 days a year which is sufficient for most crops, including even cotton. The rainfall in this arid area, averaging less than five inches annually, is so low that sustained crop production cannot be achieved without irrigation. Owing to the poor roads in the subsidiary valleys where most of the applications are filed, market conditions are relatively poor notwithstanding the fact that they are located less than 150 miles from Los Angeles.

"Lack of an adequate water supply for the development of the large acreage of potentially arable lands plus the high cost of preparing those lands for irrigation is the principal deterrent to the success of agricultural development in the Mojave River drainage area. Since the elevation of more than 90% of the lands in the whole drainage area is less than 5000 feet the rainfall received in this arid region contributes little or nothing to the annual recharge of the various basins. As a consequence it appears that the recharge to those basins is derived chiefly from waters of the Mojave River originating on the east slopes of the San Bernardino Mts., and which flows northeasterly across the Mojave Valley to Soda Lake where its flood waters are emptied.

"The Mojave River is the only stream in the whole area and is dry throughout most of its course most of the time but, because of certain bedrock constrictions in its channel, perennial surface water is found in a few small parts of the river. The river originates on the north slopes of the San Bernardino Mountains, which rise to elevations of 8,000 feet, and extends for about 110 miles in a northeasterly direction across the desert through the long and irregularly shaped Mojave Valley, through the steep-walled Afton Canyon, and across the flood plain of the Crucero Valley to Soda Dry Lake (elevation, 1,000 ft.), where its occasional flood waters are discharged.

"The long-time average annual inflow of Mojave River water to the area is 90,800-acre feet (including 7,000-acre feet from springs). While this is a comparatively sizable amount of water in relation to the supplies reaching many other arid desert basins in southern California, the fact is that this replenishable supply is enough to irrigate only a small part of the potentially arable lands within the drainage area. Also, owing to the varying physical features along the river, any overdraft on the ground-water supplies in the upper segments of the Mojave Valley would seriously affect supplies in the down-stream segments of Mojave Valley basin, and particularly the replenishable water supplies reaching the subsidiary basins of the drainage area.

"Of the 90,800-acre feet of water representing the average annual recharge to the area, only about 50,000-acre feet are annually available for irrigation since about 40,000-acre feet are consumed annually by native vegetation, by domestic and industrial uses, or lost through floods, evaporation, and seepage outflow. These estimates are taken from a recent study 3/ by the Bureau of Reclamation of the consumptive use of water by crops in the Mojave and Harper Valleys. Their calculations, using the Blaney-Criddle method, showed that the weighted average consumptive use

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3/ Report on Victor Project, April, 1952.

of water by all crops grown there in 1951 was 3.12-acre feet of water per acre. Based on this estimate of use, the 22,000 acres presently under irrigation in these two valleys would consume more than 68,000-acre feet of water annually as compared to the estimated 50,000-acre feet annually available.

"The conclusion that the present use of water in the Mojave and Harper Valleys already exceeds the long-time annual inflow available for beneficial use in the whole drainage area is supported to some extent by data from carefully selected wells in these two valleys which have been systematically observed over a long period of time by the Ground Water Branch of the U. S. Geological Survey. Their data, even as early as 1949 when only 16,000 acres were irrigated in the area, showed small but significant drops in water levels of wells in the various segments of the Mojave Valley as well as in the Harper Valley."

Hundreds of deep wells have been drilled in the Mojave Valley and about 40 deep ones in the Harper Valley, but relatively few have been drilled in the other valleys. The boundary of the area within the entire drainage basin, influenced to any extent by the Mojave River is shown on a map attached to the field report. Practically all of the irrigated lands lie within this boundary in the Mojave Valley. The wells within this boundary appear to yield water sufficient in quantity and of acceptable quality and with feasible pumping lifts to effect reclamation.

In the areas outside of this boundary of influence both within the Mojave Valley and in the subsidiary basins water will not be adequate from wells for irrigation purposes due to low yields, prohibitive pumping lifts or both. This observation is based upon knowledge of many unsuccessful wells heretofore drilled.

It has been found in general that the quality of the underground waters decrease with both the distance downstream and the distance from the Mojave River. The factor affecting the quality is the sodium content. Wells in the vicinity of Troy Dry Lake in the "Lower" Mojave Valley were among the poorest, and in addition to the high percentage of sodium a few wells revealed an excess of boron.

Owing chiefly to the percent sodium in the water, wells of the subsidiary or minor valleys of the drainage were found to produce water of very poor quality for irrigation. Wells on the Lockhart Ranch in Harper Valley have been sealed-off to all water strata above 150 feet to reduce the contamination of the upper water stratas in the hopes of improving the quality. Based on information contained in U. S. Department of Agriculture Technical Bulletin 926 of September 1948 for the interpretation of the analysis of irrigation water it was found that water from wells

on or very near the lake playas in all the subsidiary valleys was unsuitable for irrigation with both boron and percent sodium being excessive. The farther from the playa, and the deeper the water strata, the better is the quality of the water, and boron ceases entirely to be a limiting factor.

With respect to the Harper Valley, wherein many desert-land applications have been filed, the field report shows the following:

> "The irrigated lands of the Lockhart Ranch (developed since World War II) are situated in Sections 18, 19, 20, 28, 29, and 30, T. 11 N., R. 4 W., and in Sections 13, 24, and 25, T. 11 N., R. 5 W., S.B.M. Thirty deep (500 to 600 feet), electric powered wells irrigate the 2,400 acres of alfalfa, all of which are located on the southwest side and within 1½ miles of the playa. Depth to water in these wells varies from approximately 64 feet in Sec. 13, T. 11 N., R. 5 W., to about 117 feet in the southwest corner of Sec. 30, T. 11 N., R. 4 W. Lockhart has drilled a number of wells and test holes southwest of the playa in Sections 13, 15, and 24, T. 11 N., R. 5 W., without success since bedrock was encountered before striking water bearing gravels."

It is significant to note that wells located within the "zone of influence" on the Lockhart ranch, yield ample flow of good quality water at reasonable lifts, but outside this "zone of influence" water is either insufficient or non-existent, high in mineral content and excessively deep for economical pumping. This condition prevails invariably throughout the basin.

Furthermore, based upon information and data obtained in the field the cost of per acre of reclaiming desert land in the Mojave Valley varies from a low of $187.00 to a high of $344.00, depending of course upon location, type of soil, pumping lift, etc. Items comprising this cost include clearing and leveling, water development, bordering, seeding, fertilizing (in some instances) and equipment. It does not include such items as depreciation, maintenance, interest, taxes, etc. In the Newberry Area in the "Lower" Mojave Valley, the cost of developing land averaged from $400.00 to $500.00 per acre before receiving any return on the investment.

Considering such factors as soils, cost and availability of water, location of the land with respect to markets, and climatic factors with respect to the limited kinds of crops which can be grown successfully in the area, it is believed at best that the public lands in the whole Mojave River drainage area are sub-marginal so far as their agricultural character is concerned. Considering the monetary returns from alfalfa (the principal crop of the area) on a long-range basis, these returns do not justify the $300.00 to $500.00 per acre development costs estimated to apply to the public lands.

In the Newberry area 75% of the heretofore allowed entries have been either relinquished or were cancelled for failure to meet essertial requirements, and of the 10,000 acres involved less than 200 acres have been put into agricultural production as of May 1953. Most of the appellants have offered no evidence or other data whatsoever which refute the findings of the Manager in his decision with regard to their respective applications. They merely express an opinion or belief that the land can be reclaimed. The few who offered some data relating to wells near the lands applied for are not sufficiently detailed or specific as to volume of discharge of the wells mentioned, area cultivated, types of crops raised, cost of reclamation, to overcome the field findings. A few appellants asked for a special use permit, however, in view of the definite field findings that water underlying the particular tract is either non-existent, insufficient or, too deep for economic pumping, no useful purpose would be served in the circumstances by the issuance of a special use permit.

Several appellants requested additional time to submit proof that the lands described in respective applications can be reclaimed, but have transmitted no further data, though considerable time has elapsed since they filed their appeal. They were at liberty to submit any data at any time prior to the action of this office upon their appeal.

The statements of a number of appellants are not responsive to the findings in the decision. They stress the question of a sufficient water supply, when the application was rejected because of poor soil, or adverse topographic conditions, and vice-versa.

From the evidence of record, it appears that the lands applied for are unsuitable for the production of cultivated crops by irrigation due to either adverse soil, water or phsyiographic conditions, or a combination of one or more of these factors and the further fact that the underground water in the Mojave Valley is fully utilized and that any additional drain would aggravate the existing water conditions still further

Accordingly, the decision of the Manager is affirmed. This decision is subject for a period of 30 days to the right of appeal to the Secretary of the Interior. If an appeal is filed it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular 1818 attached.'

For the Director

A. H. Furr

Attachment: Circular No. 1818

Distribution:

Fred H. Almy, Attorney, (Registered Mail) See Schedule "A"
Raymond F. Vincent, Attorney, (Registered Mail), See Schedule "B"
Ugene U. Blalock, Attorney (Registered Mail), See Schedule "B"
Carroll Webert, Attorney (Registered Mail), See Schedule "B"
Mary E. Benn, Attorney (Registered Mail), See Schedule "B"
Stanley A. Furman, Attorney, (Registered Mail), See Schedule "B"
All Appellants not represented by Attorneys (Registered Mail)
SO (Calif.)
AO-1
LO (Los Angeles)
Attorneys Reading File
FSRD
BLM Reading File
AU (12)
HSP
Lands Staff Officer (2)

SCHEDULE "A"

List of appellants for Homestead Entries. All serial numbers pertain to the Los Angeles Land Office.

Serial No.	Name	Section
	T. 3 N., R. 4 W., S.B.M.	
0121379	Stanley R. Radom	26
	T. 6 N., R. 3 W.	
094365	* James L. Mealey	23
0107041	Willie J. Patterson	3
0122719	Andrew T. Johnson	32
	T. 8 N., R. 7 W.	
0105869	Edward R. Blow	32
0105948	Edward Blow	32
0106065	Thomas A. Blow	32
0106090	William R. Blow	32
	T. 9 N., R. 1 E.	
0106462	Zenon C. Rosiecki	32
	T. 14 N., R 9 E.	
0104531	Floyd W. Thomas	30

* Fred H. Almy, Attorney for Appellant.

SCHEDULE "B"

List of appellants for Desert Land Applications. All serial numbers pertain to the Los Langeles Land Office.

Serial No.	Name	Section
	T. 6 N., R. 4 W., S.B.M.	
084786	Roland J. Burghardt	32
	T. 7 N., R. 5 W.	
0119835	William W. Wagner	11
0119971	Stanley E. Lopey	8
0124626	1/ Marian L. Hall	10
	T. 7 N., R. 6 W.	
097737	Gerald B. Cooper	14
097738	Celia I. Cooper	14
	T. 8 N., R. 4 W.	
0128519	Lola Iness Brown	4
0128825	Monica I. Cheroske	3
	T. 8 N., R. 5 W.	
0118343	2/ John W. Ledford	6
0119747	Lucien J. Selig	4
0119748	Lea Selig	4
0119788	Ida Caroline Manion	18
0120088	Roy S. Harris	19
0120089	Thomas R. Jansen	19
0120318	Delbert H. Cade	20
0120371	Vivian L. Wright	30
0120787	Kajetan Stefanowich	8
0121292	1/ John G. Mason	23
0121540	Bruce N. Yarborough	3
0121541	Barbara A. Yarborough	3
0121542	Bruce M. Yarborough	2
0122550	Louis T. Koopman	15
0124623	1/ James H. Jordon, Jr.	35
0125226	1/ Florence Mason	23

Serial No.	Name	Section
	T. 8 N., R. 6 W.	
0119513	3/ Frank DeRocha Salvador	35
0119514	3/ Gina Rocha Tosta	35
0119515	3/ Velma Mary Matias	34
0119881	George R. Devore	34
0120002	Harry W. Rapp	2
0120727	John Penovich	4
0120864	Earl T. Addington	8
0120984	Devern R. Halford	24
0123205	George W. Totton	23
0124497	Katherine Ballenger	8
	T. 9 N., R. 3 W.	
0126642	Mabel T. Taylor	8
0126643	Mildred M. Gray	8
	T. 9 N., R. 4 W.	
0101876	Frank J. McKenna	18
0124167	Mae Darleen Critenbrink	19
0124168	Lawrence P. Weiland	20
0124169	Pearl Ida Weiland	20
0124341	Maurice J. Canney	32
0124733	John W. Burgess	32
0128011	Lauradell Cheroske	34
0128862	Van L. Reid	32
	T. 9 N., R 5 W.	
0119441	Lilyan Steenhoven	32
0119442	Edith F Varnum	32
0121085	Fenton Y. Pruitt	34
0121086	Julia H. Pruitt	34
0129808	Max M. Herbert	12
0129838	J. R. Turner	12
	T. 9 N., R 6 W.	
0122096	Elsie E. Rapp	23
0122692	Bart R. Swopes	23
0122693	Bartenous A. Swopes	23
0127323	Harold K. Wetrich	22
0127324	Luther N. Swopes	22
0127832	Hobart M. Turley	24

Serial No.	Name	Section
	T. 10 N., R. 3 W.	
0104495	Mae M. Oury	3
0105546	Harriet R. Reber	31
	T. 10 N., R. 4 W.	
0104428	Marjorie J. Spagna	32
0104482	Rose L. Segale	34
0104483	Dominick Ventresca	34
0104613	4/ George W. Benn	7
0105014	4/ Kyle G. Blessing	18
0105015	4/ William D. Blessing	18
	T. 10 N., R. 5 W	
093745	Edwin J. Fisher	22
0105545	Irving E. Larson	14
0105550	George W. Reber	27
0105562	Elmer E. McClelland	28
0105664	Helen May Henderson	15
0121400	1/ Louis P. Davis	2
	T. 10 N., R. 6 W.	
0121345	1/ Betty C. Mitchell	10
0121347	1/ Roy M. Mitchell, Jr.	10
0121348	1/ Nellie K. Ries	14
0121349	1/ Roy M. Mitchell, Sr.	11
0121401	1/ Raymond C. Ries	14
0121502	1/ Carl Rakovbian	15
0121706	1/ Marianne R. Miller	4
0123305	William C. Mund	22
	T. 11 N., R. 4 W.	
0128517	Henry J. Gaede	7
	T. 11 N., R. 5 W.	
0106400	Raymond J. Potts	27
0122073	5/ Irene M. Saxton	31
0122076	5/ Fred S. Macomber	31
0122549	Charles W. Keene	22
0122348	1/ Dick Dulgarian	8
0122349	1/ Haig Dulgarian	8
0123402	Reuben Derderian	27
0123403	Florence Derderian	34

Serial No.	Name	Section
	T. 11 N., R. 6 W.	
0119877	Henry E. Overman	30
0123536	1/ Carl D. Hall	4
	T. 8 N., R 3 E.	
085791	Louis Mattis	2
086093	Minnie Mattis	10
	T. 12 N., R. 8 E.	
087266	Curtis H. Springer	14
087267	Helen Springer	11
0112712	Lola Jeanne Springer	22

1/ Ugene U. Blalock, Attorney for Appellants
2/ Raymond F. Vincent, Attorney for Appellants
3/ Carroll Webert, Attorney for Appellants
4/ Mary E. Benn, Attorney for Appellants
5/ Stanley A. Furman, Attorney for Appellants.

In reply refer to:

1/ Los Angeles 085933 et al
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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LAND OFFICE
SACRAMENTO, CALIF.
APR 9 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

March 20, 1956

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DECISION

1/ Grosvenor E. Wotkyns et al : Desert Land Applications

Decisions of Manager Affirmed

Grosvenor E. Wotkyns and others listed in Schedule "A" filed appeals recently received in this office not included in the Bureau's decision of October 31, 1955. These appeals merely express an opinion or belief that the land can be reclaimed, although all were rejected "because there is no water available for irrigation." No evidence was submitted to contradict by affidavit or otherwise the findings in the supplemental field reports.

All the lands described in the applications lie within the Mojave Valley; the conditions in the appeals are identical to those discussed in the Bureau's decision of October 31, 1955, a copy of which is attached and made a part hereof. The October 31 decision is applicable to the lands under discussion on the appeals noted in Schedule "A".

The Manager's decision in each instance is therefore affirmed. Appellants have the right of appeal to the Secretary of the Interior within 30 days from receipt hereof. If an appeal is filed, it must conform to 43 CFR 221.75 and 221.76. It is suggested, as in the case of Los Angeles 0129317, Louise E. Safarik et al, sufficient hydrologist information and report accompany the appeal in order to refute the supplemental field report relied upon here because of lack of legal evidence on behalf of appellants.

A. H. Kerr
For the Director

Attachments 2

(See reverse side for distribution)

1/ See Schedule "A" for names and serial numbers of 13 desert land entry appellants who have offered no evidence refuting findings of Manager's decisions dated December 15, 1955 et seq.

Distribution:

Copy to each appellant (Registered Mail)
Each AO (3)
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Schedule "A"

Serial No.	Description - Name	Section
Los Angeles	T. 8 N., R. 5 W., S. B. M.	
085933	Grosvenor Eliot Wotkyns	24
087052	Jackson Graves Armstrong	24
	T. 8 N., R. 1 W.	
095958	Robert J. Walker	32
095959	Edna P. Walker	32
095960	Fay S. Marr	27
095961	Viola M. Marr	27
095983	Jeanette V. Richardson	22
095984	David McKenzie	22
096080	Albert Thomas Cawrse	30
0106323	Edward J. Dowling	7
0106170	Edith C. McBride	6
0106172	Norris H. Williams	7
	T. 7 N., R. 1 W.	
095981	Anna M. Glenn	4
095982	Robert A. Glenn	4

3 copies

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In reply refer to:

Los Angeles 089305
087992, et al
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

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SACRAMENTO, CALIF.
APR 9 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

April 2, 1956

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DECISION

Sidney Lee Smith, Appellant	:	Grazing Lease
Mary F. Kershner, et al. 1/ Appellees	:	Desert Land Applications Homestead Application

Bureau Decision of February 21, 1956, Vacated in Part
Decision of Range Manager Reversed
Desert Land and Homestead Applications Held for Rejection

A decision for the Director, dated February 21, 1956, affirmed the decision of the Range Manager at Bakersfield, California, dated September 7, 1955, which cancelled portions of Mr. Sidney Lee Smith's grazing lease in T. 11 N., R. 8 E., and T. 12 N., Rs. 7 and 8 E., S.B.M., California, on the ground that the lands had been classified as suitable for desert land and homestead entries. Mr. Smith has not to date filed an appeal to the Secretary of the Interior from the Bureau decision, and the last day in which an appeal from that decision can be timely filed is April 4. Due to recent Departmental interpretation with respect to the type of water rights required for desert land entries, the Bureau decision of February 21, is being reconsidered, on our own motion. 2/ The desert land and homestead applications, listed in Appendix "A", are before the Director in connection with such reconsideration of Mr. Smith's appeal.

1/ See Appendix "A" for a list of the desert land and homestead applicants.

2/ The Bureau decision of February 21, 1956, also affirmed the decision of the Manager of the Land Office at Los Angeles, California, dated December 30, 1954, which rejected portions of Mr. Smith's grazing lease that included lands classified for State Exchange under sec. 8 of the Taylor Grazing Act. That portion of the decision of February 21 is not being reconsidered, and will become final on April 5, 1956, in the absence of an appeal by Mr. Smith before that date.

The additional information which is the basis of the reconsideration of the decision is with respect to the interpretation of Section 1 of the Desert Land Act of March 3, 1877 (19 Stat. 377; 43 U.S.C., 1952 ed., sec. 321), which provides in part as follows:

> " *** it shall be lawful for any citizen of the United States *** to file a declaration *** that he intends to reclaim a tract of desert land *** by conducting water upon the same *** Provided however that the right to the use of water by the person so conducting the same *** shall depend upon bona fide prior appropriation *** ."

Regulation 43 CFR 232.13 provides in pertinent part as follows:

> "No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. *** All applications not accompanied by the evidence above indicated will be rejected."

Our attention has been directed to the decision of Oma B. Davidson, et al., A-27251 (March 12, 1956), in which the Department of the Interior rejected a number of desert land applications in Arizona on the ground that " *** the doctrine of reasonable use adopted by the State of Arizona insofar as percolating waters are concerned, does not meet the requirement of the Desert Land Act that 'the right to the use of water *** shall depend upon bona fide prior appropriation.' " The decision cited as authority for the holding a Solicitor's Opinion, Validity of Desert Land Applications and Entries in Arizona Dependent on Percolating Water for Reclamation, 62 I.D. 49, 51 (1955). The cited Solicitor's Opinion states that the words "prior appropriation" as used in the Desert Land Act, supra, were used by Congress as words of art having a clear and precise meaning in reference to the rule of prior appropriation as " *** a well established doctrine of water law in the Western States and Territories at the time the Desert Land Act was passed ***. " The Solicitor's Opinion concluded that whether a desert land entry in a particular state can be based upon percolating water depends upon whether under the law of that state (in that case, Arizona) percolating water is subject to the doctrine of prior appropriation.

The subject desert land applications refer to ground water as the source of water for the reclamation of the lands involved. Consequently, a determination must be made as to whether the applications satisfy the requirements of the Desert Land Act, supra, and appropriate regulations, quoted above, with respect to water rights.

The usual presumption in California pertaining to groundwater is stated in City of Pasadena v. City of Alhambra et al., 180 P. (2d) 699, 720 (District Court of Appeal, Cal., 1947): 3/

> "From the foregoing it is apparent that ground water which may not be classed as a subterranean stream must be classed as percolating water. *** [ground water] is presumed to be percolating water and consequently the burden of proof is upon the party asserting to the contrary. *** To satisfy this burden the boundary of the subterranean body of water must be located with considerable certainty."

None of the applications contain any indication that the proposed water source is anything other than percolating water, and the field report does not indicate the presence of any definite underground channel. 4/

3/ The decision was affirmed as modified, 33 Cal.(2d) 908, 207 P.(2d) 17 (1949), with the above quoted ruling not involved in the appeal. See also 109 A.L.R. 395; 26 Cal. Jur. 266.

4/ The Water Code of the State of California provides for the appropriation of water in " *** subterranean streams flowing through known and definite channels." Deerings California Codes (1954), Water Code Annotated, sec. 1200. Moreover, it is provided that "No right to appropriate or use water subject to appropriation shall be initiated or acquired except upon compliance with the provisions of this division." Code, supra, sec. 1225. The requirements of the division include the filing of an application for a permit to appropriate water, the granting of a permit, authorized diversion as required, and the issuance of a license which confirms the right to the use of the water so appropriated. Therefore, even had the desert land applicants shown satisfactory evidence that the available water is that of a subterranean stream flowing through a known and definite channel, their applications would be subject to rejection for failure to furnish evidence showing the acquisition or steps toward the acquisition of an appropriative right under the Water Code to use such water. 43 CFR 232.13.

Since the presumption and available evidence indicate that the subject waters are percolating, our main concern is with the provisions of California law with respect to such percolating waters.

Percolating waters are not included in the permit and licensing provisions of the Water Code. Deerings California Codes (1954), Water Code Annotated, sec. 1200; City of Pasadena v. City of Alhambra et al., 33 Cal. (2d) 908, 207 P. (2d) 17 (1949). In California since the leading case of Katz v. Walkinshaw, 141 Cal. 116, 70 Pac. 663, 74 Pac. 766 (1902), the rule of reasonable use of correlative rights has been applied in reference to percolating waters. A later case described such rights in the following language:

> "With regard to such landowners, these cases hold that each owner of land overlying the same general underground supply of water may take such water on his own land for any beneficial use thereon, so long as such taking works no unreasonable injury to other land overlying such waters; that if the natural supply is not sufficient for all such owners, each is entitled only to his reasonable proportion of the whole, and that each may apply to the courts to restrain an injurious and unreasonable taking by another, and to have the respective rights adjudicated and the use regulated so as to prevent unnecessary injury and restrict each to his reasonable share." City of San Bernardino v. City of Riverside, et al., 186 Cal. 7, 198 Pac. 784, 788 (1921).

The right of overlying landowners to percolating waters is not acquired by compliance with the laws relating to appropriation, including priority of diversion and use, but is acquired by ownership of land; it is not a right to a definite quantity of water, but is only a correlative right subject to reduction if its use is unreasonably injurious to the uses of other overlying landowners, even though the others' use may be subsequent; and the right of each overlying landowner is subject to proportionate reduction in case of a shortage of the natural supply. In basic respects, therefore, the correlative right differs from the established water law doctrine of "prior appropriation," and cannot qualify as a water right within the meaning of the Desert Land Act, supra. See Validity of Desert Land Applications, supra, at 53, 54.

The above conclusion disposes of the major issue here involved. However, two additional points need consideration. Percolating waters can be appropriated to the extent set out in City of Pasadena v. City of Alhambra, et al., 33 Cal. (2d) 908, 207 P. (2d) 17, at 28, 29:

"Any water not needed for the reasonable beneficial uses of those having prior rights is excess or surplus water. In California surplus water may rightfully be appropriated on privately owned land for nonoverlying uses. *** Proper overlying use, however, is paramount, and the right of an appropriator, being limited to the amount of the surplus, must yield to that of the overlying land owner in the event of a shortage, unless the appropriator has gained prescriptive rights through the taking of nonsurplus water."

Since the correlative right of the overlying owner does not qualify as a water right within the meaning of the Desert Land Act, supra, and since the right of appropriation of surplus percolating water is subordinate to the correlative right, such appropriative right could not qualify.

There is no claim in the subject cases of prescriptive rights to the water. Such rights arise as stated in the Pasadena case, supra, at 29:

"Accordingly, an appropriative taking of water which is not surplus is wrongful and may ripen into a prescriptive right where the use is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under claim of right."

Such a right has been neither claimed nor proved in any of the subject cases. In any event, appropriative taking of water on public domain without authority of law would be in trespass against the government and could not ripen into a prescriptive right.

Consequently, the desert land applications are not supported by evidence of a water right as required by the Desert Land Act, supra, and 43 CFR 232.13 quoted above, and must be rejected. Oma B. Davidson, et al., supra.

In reference to the one homestead application here involved, it is noted that a homestead application for land desert in character, must also be supported by evidence of a water right. 43 CFR 296.4. In addition, reconsideration of the homestead application revealed that only a small part of the land applied for lies within the roughly designated zone of influence of the Mojave River drainage area, and that only on the outer fringe. The field examination report discloses that lands clearly within the designated zone of influence in the subject subsidiary basin are of doubtful value for agricultural development, since even were water obtainable it would be from deep wells with comparatively small yields, the recharge would be very low, and the quality of the water would be poor to doubtful. Wells drilled outside

the designated area are clearly not adequate for irrigation purposes. The applicant gave no properly supported evidence that water is available, but merely stated that there is water at the depth of from 100 to 200 feet, and that he would obtain such water from deep wells. Consequently, there is not sufficient evidence to justify classification of the land as suitable for homestead entry. See 43 CFR 296.4.

The conclusions reached above that the subject desert land and homestead applications must be rejected, make unnecessary the cancellation of Mr. Smith's grazing lease in conflict therewith.

Accordingly, the Bureau decision of February 21, 1956, is vacated, insofar as it affirmed the decision of the Range Manager, dated September 7, 1955. The decision of the Range Manager, dated September 7, 1955, which cancelled Mr. Smith's grazing lease as to the extent of its conflict with the land classified for desert land and homestead entries, is reversed.

Although the Director has delegated to field officials authority to reject desert land and homestead applications, the Director may in his discretion take such action directly. The desert land and homestead applications which are before the Director in connection with Mr. Smith's appeal, and which are listed in Appendix "A", have been considered on their merits, and are hereby held for rejection, for the reasons set out above.

This decision is subject for 30 days to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818, attached. If an appeal is filed by any of the desert land or homestead applicants, Mr. Sidney Lee Smith should be considered an adverse party within the meaning of the above regulations; or if Mr. Smith files an appeal the homestead and desert land applicants should be considered adverse parties.

Byrne Falck
Acting Director

Attachments 2

DISTRIBUTION:
To all applicants (Registered Mail)
Mr. Sidney Lee Smith (Registered Mail)
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APPENDIX "A"

Serial No.	Name	Type of Application	Township & Range
L.A. 087992	Mary F. Kershner	Desert Land	12 N., R. 8 E.
" 087993	Cora L. Kershner	"	12 N., R. 8 E.
" 087994	Helen K. Macy	"	12 N., R. 8 E.
" 091082	Rex Warnix	"	12 N., R. 7 E.
" 091154	Bertha H. Himes	"	12 N., R. 7 E.
" 091155	Isaac A. Himes	"	12 N., R. 7 E.
" 091345	George F. Begnell	Homestead	12 N., R. 7 E.
" 093405	Ruby E. Huffman	Desert Land	11 N., R. 8 E.
" 095497	William J. Hope	"	11 N., R. 8 E.
" 095530	Wayne P. Scott	"	11 N., R. 8 E.
" 095882	John M. Bedgood	"	11 N., R. 8 E.
" 093406	Francis Torres	"	11 N., R. 8 E.
" 093407	Beulah Mae Choquette	"	11 N., R. 8 E.
" 093720	Augustus W. Crawford	"	11 N., R. 8 E.
" 093721	William D. Reynolds	"	11 N., R. 8 E.
" 093869	William F. O'Donnell	"	11 N., R. 8 E.
" 095872	Alta B. Spaulding	"	11 N., R. 8 E.
~~" 093917~~	~~William Peart~~	~~"~~	~~11 N., R. 8 E.~~
" 095372	Oliver Hawthorne	"	11 N., R. 8 E.
" 095388	Bill W. Hawthorne	"	11 N., R. 8 E.
" 095471	Bert E. Smee	"	12 N., R. 8 E.
" 095484	Sidney Lee Smith	"	12 N., R. 8 E.
" 095496	Dolores R. Hope	"	11 N., R. 8 E.
" 0105740	Theodore T. Inouye	"	12 N., R. 8 E.
" 0105822	Janet M. Laski	"	12 N., R. 7 E.
" 0106137	Casimir Dabrowski	"	12 N., R. 7 E.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 16, 1956

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DECISION

David M. Campbell	:	Desert Land Application

Manager's Decision Affirmed

On July 14, 1954, David M. Campbell appealed to the Director, Bureau of Land Management, from the decision of June 8, 1954, of the Manager, Land Office, Los Angeles, California, which rejected his desert land application, Los Angeles 0114715, because it was not signed and because the land applied for is included in First Form Reclamation Withdrawal of April 9, 1909.

In his appeal, the appellant has requested that his "application be deemed to have been signed by the undersigned by reason of the signature of the undersigned appearing hereon," and has alleged that the order of withdrawal has been revoked and that the lands have been restored to entry and are now open to entry by properly qualified persons.

The records in the district land office and in this office disclose that the land applied for is withdrawn under First Form Reclamation Withdrawal of April 9, 1909, and has never been restored to entry.

Under the provisions of the withdrawal order the lands are not subject to disposal under any of the public land laws, and the Manager was correct in rejecting the application.

In the last paragraph of his appeal Mr. Campbell has requested that his "application be reinstated and that the premises embraced therein be restored to entry...." The restoration of this land from the withdrawal is in the province of the Bureau of Reclamation, and the appellant may if he so desires, request such restoration from that Bureau.

However, if the land is restored to entry it will be subject to the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, 1186; 50 U.S.C., app. 560-572). Under the above-mentioned act, veterans of the 2nd World War and the Korean Conflict are given a preference right of 90 days from the effective date of restoration of the withdrawn lands within which to file applications under the public land laws.

The Manager's decision is affirmed.

This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from notice hereof. Any appeal filed must conform to the requirements of 43 CFR 221.75 and 221.76, contained in Circular No. 1818 attached.

For the Director:

A. H. Zuck

Attachment: Cir. 1818

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 26, 1956

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DECISION

Frank Robert Graham : Desert Application

Manager's Decision Affirmed

Mr. Frank Robert Graham, applicant under desert land application Los Angeles 0127713, has appealed to the Director from the decision of the Manager, Land Office, Los Angeles, California, dated February 24, 1955, which rejected his application.

The application embraces the N½ sec. 6, T. 9 N., R. 14 W., S.B.M., California. The rejection was based upon a field examination made on the ground which disclosed that approximately 130 acres in the central portion of sec. 6 are included in a flood channel where the soil is gravelly to rocky, and totally unsuitable for cultivation, and that the remaining lands would require large amounts of water for irrigation. The field report also discloses that the existing wells in the area indicate that the possibilities of obtaining sufficient water for irrigation purposes at economic pumping depths are remote, and that the land is located at a higher elevation than the area where irrigation pumping is being carried out and wells at lower elevations are 500 to 700 feet in depth and approaching the limits of uneconomic pumping lift.

In his appeal the appellant argues that he had anticipated drilling to 500 feet for irrigation water; that he is familiar with an area in the State of Washington, where there are deeper wells; where the soil is much worse and where the climate is dryer than the area under application 0127713.

The appellant's mere assertion, without any supporting affidavits or other evidence that he feels the land can be cultivated, is insufficient to overcome the field report. The appellant is relying on agricultural activities (apple orchards) in the State of Washington, but he has offered no evidence to show that the same

degree of success would exist in the area in California for which he has made application.

In the case of Mary Refugio Jackson, et al., A-27236, A-27237, decided February 29, 1956, the Assistant Secretary of the Interior held that before a classification will be made under Section 7 of the Taylor Grazing Act, as amended (45 U.S.C., 1952 ed., sec. 315f), 1/ it must be clearly demonstrated that the lands applied for are in fact suitable for agricultural production. Where the classification is adverse to the applicant, the burden is upon the applicant, should he appeal the classification, to show in what respect the adverse classification is in error. A mere statement that the facts are not as stated in the classification, is insufficient. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for agricultural use and that the adverse classification is erroneous.

The field examination also indicates that the wells at lower elevations than the land in application 0127713 are 500 to 700 feet in depth and are approaching the limits of uneconomic lift. In the case of Elizabeth Bullard, et al., A-27242, decided December 28, 1955, the Assistant Secretary of the Interior held that it is proper to refuse to classify land for desert land entry where it appears that the probable depths to water exceed the depth at which it is economical to pump water.

The statements of the appellant fall far short of that required to overcome the positive evidence in the field report. There appears to be no basis for modifying the Manager's decision of February 24, 1955, and it is affirmed.

This decision is subject for 30 days to a right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular No. 1818, attached.

The classification report indicates that the land applied for is classified for disposal under the non-agricultural laws.

1/ Section 7 of the Taylor Grazing Act, as amended (43 U.S.C. 1952 ed., sec. 315f), authorizes the Secretary of the Interior, in his discretion, to classify lands in a grazing district which are more valuable or suitable for agricultural production than for the production of native grasses, and to open such lands to entry under the applicable land laws.

The Manager of the Land Office at Los Angeles, California, will, upon request, furnish you with any further information you may desire concerning the classification of the land and the Act under which it may be acquired.

For the Director:

A. H. Zwer

Attachment: Cir. 1818

DISTRIBUTION:

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 26, 1956

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DECISION

Kenneth Clair Allen Chester Williamson Allen	:	Desert Land Applications

Manager's Decision Affirmed

Appellants have appealed from the decision of the Manager of the Land Office, Los Angeles, California, rejecting their desert land applications listed below 1/ filed pursuant to the Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321 et seq.) as amended. The reason for the rejection was that the lands applied for were within a stock-driveway withdrawal.

Both appellants have appealed on the ground that there was no apparent reason for continuing the withdrawal as a stock-driveway since none of the public land in the area was under a grazing lease. Both appellants forwarded with their appeals requests that the lands be restored from the withdrawal.

Section 10 of the Act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300) authorizes the Secretary of the Interior to withdraw lands for stock-driveways and to prescribe such rules and regulations as may be necessary for the proper administration and use of such lands. The applicable Departmental regulation, 43 CFR 295.7(e), provides as follows:

> "Lands withdrawn for driveways for stock or in connection with water holes are not subject to entry or disposition, and applications for the acquisition of lands so withdrawn will be rejected by the Manager. * * * ."

1/ Kenneth Clair Allen, Los Angeles 0123848, N½ sec. 18, T. 32 S., R. 36 E., M. D. M., California, for 320 acres.

Chester Williamson Allen, Los Angeles 0123849, S½ sec. 18, T. 32 S., R. 36 E., M. D. M., California, for 320 acres.

Since the lands applied for are within a stock-driveway withdrawal, they are not subject to desert land entries; therefore, it is necessary that the applications be rejected. Len Everett, A-27050 (March 23, 1955).

The record does not contain the information necessary to reply to the appellants' contention that the lands applied for are no longer needed as a stock-driveway. Therefore, the requests for revocation of the withdrawal are being referred to the Bureau's State Supervisor at Sacramento, California, for consideration and appropriate action. However, should a determination be made that the withdrawal be revoked and the land restored to entry, no preference can be given the appellants by reason of the applications under consideration. Lewis G. Norton, 48 I.D. 507 (1921); Goodale v. Olney, 13 L. D. 498 (1891); Hall et al. v. Stone, 16 L. D. 199 (1893); Smith v. Malone, 18 L. D. 482 (1894); also see Charles W. Trounson, 60 I. D. 182 (1948); Emily Juanita Miller, A- 26966 (September 20, 1954).

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

A. H. Tiver

Attachment

DISTRIBUTION:

Mr. Kenneth C. Allen (Registered Mail)
Mr. Chester W. Allen (Registered Mail)
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DECISION

Dickson W. Bostwick, Contestant - Respondent	:	
Estate of Jennie Adel McArthur, Deceased Ingolf A. Stub, Executor Contestee - Appellant	:	Desert Land Entry

Decision of Hearings Officer Reversed
Contest Dismissed

This is an appeal from a decision of the Hearings Officer dated May 18, 1955, holding the above desert land entry for cancellation because "the yearly expenditure and improvements have not been made as prescribed by the regulations." The hearing was held before Robert T. Felton at San Diego, California, on February 21, 1955.

F A C T S

The following facts appear uncontroverted:

Jennie G. McArthur was allowed desert land entry on July 12, 1949, to S½S½ sec. 17, and N½N½ sec. 20., T. 12 S., R. 8 E., S. B. M., California.

On July 11, 1951, entrywoman died leaving a last will devising her estate to Ingolf A. Stub, who was appointed and who qualified as her executor on October 15, 1951. Petition for probate and Letters Testimentary are filed in the Superior Court of the State of California, County of San Diego, No. 46933.

On June 9, 1953, Ingolf A. Stub requested an extension of two years time to make final proof because the estate was in litigation in the Probate Court for approximately a year. Final proof on the entry was due July 11, 1953.

On July 8, 1953, Dickson W. Bostwick filed Contest No. 5757 alleging that "to date only a few acres has been partially cleared (bushes are still growing on the supposedly cleared land); and that no apparent effort has been made to drill water wells or wells or to cultivate the land. Except for the partial clearing the land is as was when entered in 1949." The answer of the executor denied the charges and, inter alia, claimed 45 acres were cleared at a cost of $1,080.00.

On March 16, 1954, an extension of time to file final proof was granted to July 12, 1956, "without prejudice to the rights, if any, of the contestant, and will be subject to termination upon any adverse decision resulting from such contest."

Since the issue involved is largely a question of fact, re-evaluation and review of the testimony appears necessary.

Contestant Bostwick, an engineering contractor, testified that the land had been only partially cleared and that one can see grass growing where it has been cleared, that the roots had not been removed from the brush, that no wells had been drilled and that the road to the property "is no more than a jeep trail"; that in his opinion not over two work days was involved in clearing the land.

He further testified that he had been on the property two dozen times between 1950 and 1954, and estimated that only about 15 acres were partially cleared.

On cross-examination he admitted that both he and his brother "were interested in the whole area, especially the Addington Section" which he thought could be purchased (Tr. 13).

In one answer on cross-examination, he stated, "I was interested in land water, in both, yes; yes, water and land, yes. I don't see where it is pertinent, but" (Tr. 15). He claimed each year 1950, 1951, 1952, 1953 and 1954 he inspected the McArthur homestead.

On redirect examination he admitted he did not measure with tape or surveying instrument the 15 acres he claimed partially cleared.

Contestant's former partner, Wellsworth F. Raker, testified he had been on the property about 15 times, from 1950 to 1952, and that brush had been cut off from 15 to 20 acres, "but the roots had not been taken out"; that the road appeared to be made by a bulldozer that had gone across the land on its way to the Lucas property to do clearing work.

On cross-examination he admitted he and Bostwick "covered the whole area that was available for applying because, in fact, he (Bostwick) has the map that I did draw to show that, who had all the properties, when they were filed on and the complete data on all of them, *** with a view to acquiring the properties if there was any vacant" (Tr. 35, 36).

Contestee produced the following witnesses: Lawrence M. Addington, Zelia Addington, George Putnam, Frank Parry and Ingolf A. Stub.

Witness Lawrence M. Addington, the adjoining entryman, testified substantially that he had been on the land involved about 50 times a year since 1951; that during this time he had seen several different dozer men clearing land there at different times, that he had personally checked over the clearing by driving west with a jeep and "skipping it off" and it is about 1320 feet each way; that at the time the contest was filed there were approximately 48 acres cleared, and presently, including the roads, an additional 15 acres cleared, as shown on the map he drew, (Contestee's Exhibit A) after the contest; that it was brush cleared, with maybe a root left every 200 or 300 yards. He testified that all that was necessary now was to level the land and ditch it plus the water for a crop.

On cross-examination this witness testified:

> "Q. And you say all the roots were cleared?
> A. I would say yes. Not technically clear, every one of them, but I would say approximately all destroyed, yes." (Tr. 30).

Zelia Addington testified that she was the wife of Larry Addington, whose homestead joins Mrs. McArthur's on the south. Her testimony was substantially similar to her husband's, with some exceptions. She stated her husband was a former surveyor and that she had assisted him in checking over the McArthur clearings, and that her estimate was the same as her husband's.

She claimed she had several conversations with Bostwick at various times and places; that Bostwick at one time wanted to buy 120 acres of their place or other land "in order to organize a water company and sell to the rest of us, that the excessive cost of my getting water or anybody getting water would better be prorated through the water company provided he could get the land." In a later conversation Bostwick told her he was no longer interested in her land because "he had plenty of land ahead of him in the McArthur land" (Tr. 36). She also testified that Bostwick told her "Stub would never get patent to the McArthur land." (Tr. 42).

George Putnam, a well drilling contractor, testified that he first went on the McArthur property in 1952, and staked out a location for wells; the reason he did not drill same was because he had some other prospects lined up and he wanted to group them all together. Later when he contacted Mr. Stub, he was informed of the contest and Stub did not then want to drill until the contest was settled. It was he that drilled the Addington well.

He also stated that at the time of his visits he noted considerable clearing had been done, but "not knowing where the corners and lines were, I wouldn't state how many acres had been cleared." (Tr. 66, 67). Later on cross-examination by contestant Bostwick, he testified:

> "A. * * * in my estimation there's 40 or 50 acres cleared in there, but I don't know whether that is on the McArthur property." (Tr. 71).

Frank Parry, a tractor contractor, testified he was on the McArthur property at Christmastime, 1954, and it was his opinion that approximately 50 acres had been cleared.

Ingolf A. Stub, executor and heir of Jennie McArthur, deceased, testified that before Mrs. McArthur's death he arranged with Bratton & Sturges in 1950 for some clearing which cost $440. and employed Mr. Cameron to survey out the necessary roads at a cost of $100.; that $130 of the $510 paid Bratton & Sturges was for work done on the Lucas land and should not be charged to the McArthur property, and that he paid other incidental amounts of approximately $25 to "have the annual proof filed."

In 1951 the sum of $337 was paid by Muroako for clearing and an additional $210 for clearing done by Robert L. Graham. (Contestee's Exhibit "C"); that although the annual proof filed for 1952 by his witnesses shows $260, he actually expended an additional $140 to Carl H. Bergman for bulldozing. (Contestee's Exhibit "D"). (Tr. 99).

A careful review of all the testimony leads to the conclusion that the following facts have been established:

(1) Despite the fact that a few roots every 200 to 300 yards may not have been completely removed, nevertheless approximately 48 acres were substantially cleared, including a road about 2½ miles, at the time the contest was filed.

(2) That no less than $380 in 1950; $547 in 1951, and $400 in 1952 - allowable expenditures, were actually spent by contestee-appellant for improvements to the property.

CONCLUSIONS OF LAW

(1) The expenses for surveying the location of the roads included in the 1950 yearly proof is an allowable expenditure pursuant to 43 CFR 232.20(a).

(2) Despite the discrepancies of his testimony concerning the annual proofs, Stub's testimony and exhibits may properly be considered as showing the correct expenditures which were not all within the knowledge of the proof witnesses. Stevenson v. Scharry, 34 L.D. 675.

(3) The burden of proving the reasonable value of the work done or improvements placed upon the property was not upon Stub, but upon the contestant to challenge and disprove such claimed expenditures. Munson v. Johnson, 39 L.D. 127.

(4) At the time the contest was filed Stub had substantially complied with all the requirements of 43 CFR 232.19 and 232.20, and the contest after the hearing should have been dismissed.

DECISION

For the above reasons the decision of the Hearings Officer is reversed, and the contest is dismissed.

The right of appeal to the Secretary is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

In the event of appeal, the adverse party to be served with notice thereof is the Estate of Jennie Adel McArthur (Deceased), Ingolf A. Stub, Executor, 27 West Washington Street, Pasadena, California.

Byron Foley

Acting Director

Attachment

Distribution on next page

DISTRIBUTION

Mr. Harrison G. Sloane, Atty. for Contestant-Respondent (Registered Mail)
Mr. Dickson W. Bostwick (Registered Mail)
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Mr. Arthur Vandersyde, Atty. for Contestee-Appellant (Registered Mail)
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Lands Staff Officer (1)
Alaska OS (1)
Area Counsel (Anchorage)(2)
L&M Officer (Anchorage)(2)
District Manager (Juneau)(2)
BLM Reading File
Attys. Reading File
Case File
FSRD
AU (25)
CWM-JBP

In reply refer to:

Los Angeles 086740
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 1, 1956

Registered Mail
Return Receipt Requested

DECISION

Paul M. Blakely : Desert Land Application

Decision of Manager Affirmed

In a decision dated June 28, 1955, the Manager of the Land Office at Los Angeles, California, rejected desert land application Los Angeles 086740 of Paul M. Blakely 1/ for the reason that the land applied for is unfit for cultivation. The decision was sent to Mr. Blakely's address of record, 614 S. Old Ranch Road, Arcadia, California. The letter was returned the next day marked "Moved, Left no address".

On April 26, 1956, the California State Office of the Bureau of Land Management, at Sacramento, California, received a letter from Mr. Blakely which had been mailed to the address of a former Bureau office in San Francisco, California. The letter made inquiry concerning the status of the subject desert land application. Mr. Blakely gave as his return address, 3791 Locksley Drive, Pasadena 10, California.

Mr. Blakely's letter was forwarded to the Manager of the Land Office at Los Angeles, who replied in a letter dated May 4, 1956. The Manager's letter referred to the previous mailing of the decision of June 28, 1955, and stated:

> "If the Post Office had held this piece of registered mail for a period of 30 days, it would have been proper for the Land Office to finally reject your application and close the case without further notice to you. The Regulations provide for such action when the Land Office is not notified of a change of address.

1/ Mr. Blakely's application was filed May 14, 1951, for desert land entry under the Act of March 3, 1877, as amended (43 U.S.C., 1952 ed., sec. 321, et seq.) for the NE¼ sec. 32, T. 11 N., R. 3 W., S.B.M., California.

"As a courtesy to you, we are attaching the original copy of our decision of June 28, 1955. Also enclosed is an Information Sheet concerning instructions on appeals. Note that a $5.00 filing fee must accompany appeals."

By letter received in the Land Office May 28, 1956, Mr. Blakely appealed to the Director of the Bureau of Land Management, enclosing payment of $5.00.

The record shows that a desert land application was filed by another applicant on November 14, 1952, for the land here involved, and for some reason not appearing of record has not yet been rejected.

Because of the procedural grounds for this decision, set out below, it is not necessary to consider the matters raised by Mr. Blakely in his appeal.

Regulation 43 CFR 232.11, pertaining to desert land entries, provides that applicants must furnish their post office address, and warns that:

> "It is especially important to claimants that upon changing their post office addresses they promptly notify the manager of such change for, in case of failure to do so, their entries may be canceled upon notice sent to the address of record but not received by them."

Regulation 43 CFR 1954 Edition 220.10(f), which was in effect at the time of the Manager's decision of June 28, 1955, provides that notices required to be given of decisions involving the right of appeal be served by the Manager personally or by registered letter, and 43 CFR 1954 ed., 220.10(g) provides in pertinent part that:

> "When service is made by registered letter, the registry return receipt, <u>or returned letter</u>, as the case may be, must, in every instance, be sent up with the papers in the case, or otherwise accounted for by the manager." (emphasis supplied).

The Department has held that the unsuccessful attempt by the postal service to deliver the decision of the Director to a party affected, because the party had moved and left no address, constituted constructive service upon the party of notice of the decision. <u>Cornell N. Shelton</u>, A-26441, (October 17, 1952). There does not appear to be any regulation requiring that an undelivered registered letter be held

30 days in the post office in order to constitute constructive notice, except 43 CFR 1954 Ed., 220.11, relating to notice to unknown heirs of a public land claimant, a matter not here material.

The possible reason for the Manager's statement in his letter of May 4, 1956, that the case could have been closed had the post office held the piece of registered mail for 30 days, is the decision William R. Brewer, Caswell Silver, 60 I.D. 454 (1951). That case affirmed the action of the Associate Director in holding that the direction on a registered envelope that the letter should be returned to the land office "If not delivered within 30 days", means that the letter should be held the full 30 days in order to constitute constructive notice. The Brewer case was apparently decided on the basis of a postal regulation which permitted the sender to designate, within certain limits, the period that the undelivered registered letter will be held by the post office before it is returned to the sender. See 39 CFR, First Edition, 16.35, for the provision which continued in force without change here material and was incorporated in 39 CFR, 1949 Edition, 60.17.

The envelope involved in the present case contained the statement "Return after 30 days"; however, prior to the Manager's decision of June 28, 1955, the postal regulations were changed so that a registered article addressed to a person who has moved and left no forwarding address would be returned to the sender immediately, even though the sender's instructions indicated a specific retention period for the article. The change was brought about by a revision to Chapter I of Title 39, Code of Federal Regulations, effective December 1, 1954, 19 F.R. 7765. In the revision Part 51 pertaining to "Registry", (19 F.R. 7809-7811) did not contain the provision permitting the sender to designate a specified retention period for undelivered registered articles. In view of the change in the postal regulations, this Bureau could no longer insist that a postmaster hold such mail for a specified period. By memorandum to State Supervisors and Area Administrators of this Bureau, dated December 28, 1954, such officials were informed of these changes, and were directed that registered articles returned undelivered should be incorporated in the file with a notation of the date of the return, and that such would constitute service on the addressee, and the case could be closed on that basis.

The above procedure is fully in line with the regulations, 43 CFR 232.11, 43 CFR 220.10(f), and 43 CFR 220.10(g), referred to above. The Brewer case, supra, which is seemingly inconsistent, can be distinguished on the basis of the change in postal regulations. The Brewer case is therefore not here controlling. To hold otherwise would be to deny administrative finality in cases where a decision was mailed to a party who moved and left no address and the Bureau is powerless to require that the letter be held for 30 days in the post office, and would permit claimants who were mailed Manager's decisions under such circumstances to reopen the case at any time in the future. Such a result cannot be countenanced under the regulations previously cited, which are here applicable, any more than it could be countenanced under the new Rules of Practice, effective May 1, 1956. 2/

Consequently, the Manager's decision of June 28, 1955, is deemed to have been constructively served on Mr. Blakely on June 29, 1955, the date the registered article was returned from the post office marked "Moved, Left no address". Thirty days thereafter the case should have been closed. The enclosing of a copy of the decision of June 28, 1955, in the Manager's letter of May 4, 1956, was indicated by the Manager as a gesture of courtesy, and in any event it could not be construed as a new decision, nor as reviving the right to appeal, since the decision of June 28, 1955, had been adequately served on the claimant. The appeal by Mr. Blakely is considered to have been taken from the Manager's decision of June 28, 1955. Since the $5.00 filing fee in connection with appeals is only applicable to appeals filed from decisions dated after May 1, 1956, the fee need not have been paid in connection with this appeal.

Regulation 43 CFR 221.64, which was applicable at the time of the decision of June 28, 1955, states in material portion that "The party aggrieved will be allowed 30 days from receipt of notice

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2/ It is noted that the new Rules of Practice, effective May 1, 1956, provide in 43 CFR 221.95(b) that "* * * Service by registered or certified mail may be proved by * * * showing that the document could not be delivered to such person at his record address because he had moved therefrom without leaving a forwarding address * * *", and in 43 CFR 221.95(c) that "A document will be considered to have been served at the time * * * of the return by the post office of an undelivered registered or certified letter."

in which to file notice of appeal in the land office." In decision Leo W. Winter, A-27097, (May 25, 1955), the Department did hold that under the facts there present "* * * it would appear that the Director could have waived Winter's late filing of his appeal," but there appears to be no authority for adopting such a course in a case such as this where the claimant failed to keep the land office informed of his current address as required by 43 CFR 232.11 quoted above, and did not file an appeal until nearly a year after the decision had been served. As noted previously, the record shows that an application by another for desert land entry on the same land is on file in the Land Office.

Accordingly, the decision of the Manager is affirmed. The $5.00 filing fee, which accompanied the appeal to the Director, will be returned after the appeal period hereinafter allowed expires, in the event that Mr. Blakely does not appeal to the Secretary, since for reasons set out above, no filing fee was required to accompany the appeal from the Manager's decision of June 28, 1955.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

Byrne Falck
Acting Director

Attachment

Distribution:
Mr. Paul M. Blakely (Registered mail)
Lands Staff Officer (1)
GST
Appeals List No. 1

In reply refer to:

Los Angeles 0100146
0100147
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1956.

DECISION

Registered Mail
Return Receipt Requested

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:

Charles C. Bogardus
Vera L. Bogardus : Desert Land Application

Decision of Manager Affirmed

The above cases were remanded by decision (A-27219) of the Assistant Secretary of the Interior, dated November 23, 1955, to the Bureau of Land Management for a detailed examination of each of the tracts sought by the appellants and to reconsider their applications for desert land entries, filed pursuant to the Act of March 3, 1877 (19 Stat. 377, 43 U.S.C. 321 et seq.), as amended, on the basis of such examination.

The records show that Mr. and Mrs. Bogardus filed desert land applications Los Angeles 0100146 and 0100147 for the N½ and S½, respectively, of sec. 9, T. 3 S., R. 17 E., S.B.M., California, on January 15, 1953. Mr. Bogardus' application was rejected as to the N½, E½NW¼ sec. 9 and Mrs. Bogardus' application was rejected as to the SE¼ sec. 9 on the basis of an area classification of approximately 300,000 acres in the Chuckawalla Valley, which report did not specifically describe the tracts applied for but described in general terms the features of the area recommended for allowance and the remaining areas not recommended for allowance. On the basis of this report the Manager of the Land Office, Los Angeles, California, determined that the lands sought were physically unfit for cultivation, owing to poor soils and adverse topographic features. The Manager's decision was affirmed by the Director's decision of April 18, 1955.

A field examination on April 29, 1956, of the two tracts sought revealed that the land is located in the northern part of Chuckawalla Valley, an arid desert basin lying in southeastern Riverside County, California, and lies on the alluvial slopes that have been formed in part by the material deposited from the Granite Mountains lying to the northeast; that the elevation of the land

ranges from approximately 610 feet at its lower point to 770 feet along its higher slopes; that the slopes are fairly even and sloped in the same direction with the gradient varying from approximately 2 to 2-1/2 per cent; that there were many shallow gullies cutting through the land formed by surface run-off from rain storms, but in view of the limited rainfall in the desert region that it did not appear that they will be subject to any extensive erosion. With respect to the soil, the report set forth that the soil is predominantly coarse sand, mixed with gravel in the top soil and of similar texture in the upper portions of the subsoil; that the land is covered by gravels and cobbles; that the soil contains very little of the fine materials (silt and clay); that because of its gravelly and sandy texture the soil is highly permeable and of low moisture-holding capacity and subject to excessive drainage if placed under irrigation; and that desert soils of the type have inherent low fertility. It was also indicated that the native vegetation is predominantly creosote bush and white bur sage with scattered growths of cacti and galleta grass; and that the growth was not too vigorous at the time of the examination, and the density of cover was rather low.

The report concluded that while the land sought may be suitable on the basis of its topographic features for agricultural development that the type of soil found on the rejected portions of the land applied for was not feasible for such development under the desert land laws.

In their appeal to the Secretary of the Interior the appellants had asserted that the soil formation of the land sought was comparable to that of the adjoining sec. 8 which had been classified as suitable for desert land entry; and the lands also possessed the same topography as secs. 7, 8, 17 and 18 which "were also accepted in whole by the Manager." With respect to these assertions the field examination set forth that a large portion of the land in sec. 8 is situated at a lower elevation along the alluvial slopes than is sec. 9; that the soil of this section is also of sandy texture but is composed of fine to medium size grains, with less amounts of coarse sand and gravel which predominate in the rejected portions of the lands applied for; and that a greater portion of the land in sec. 9, which was classified as suitable in the Chuckawalla Valley report is quite similar in soil texture with the soil type in sec. 8. The report continued that the general topographic features of the land in secs. 7, 8, 17 and 18 are fairly similar to all of the land in sec. 9, but there were slight variations in topography due to the presence of low sand dunes in secs. 7, 8, 17 and 18, and a shallow wash passes in a northwest to southeasterly direction through secs. 8 and 17; and that these four sections are situated as a whole on a lower elevation than sec. 9, and range from approximately 560 to 680 feet in elevation.

Where a classification of land is adverse to the applicant the burden is upon the applicant, should he appeal the classification, to show by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson, et al., A-27236- (February 29, 1956). On the basis of the evidence in the record, it does not appear that the appellants have overcome the adverse classification by the Bureau, and there is no evidence in the record to show that the classification is erroneous.

For the reasons indicated above, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each case. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director

A. H. Turner

Attachment

Distribution:

Mr. Charles C. Bogardus (Registered Mail)
Mrs. Vera L. Bogardus (Registered Mail)
Lands Staff Officer (1)
CLS
Appeals List No. 1

In reply refer to:

Los Angeles 0131995
0131580
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 3, 1956

DECISION

Registered Mail
Return Receipt Requested

Wilma I. Claverie
Charles Schoenburg

Desert Land Application

Request for Hearing Denied
Application 0131995 Entitled to Priority
Over Application 0131580

Wilma I. Claverie, through her attorneys, Sturdevant & Morrow, has appealed to this office from decision dated May 8, 1956, of the Land Office, Los Angeles, California, which dismissed her protest against desert land application Los Angeles 0131580 of Charles Schoenburg. Mrs. Claverie had protested that the Schoenburg application was invalid and not entitled to priority over her desert land application Los Angeles 0131995 for some of the same lands because Mr. Schoenburg and the individuals who witnessed his application had no knowledge of the lands applied for at the time of making the application and that Mr. Schoenburg at that time had not personally examined the lands, as required by the regulations (43 CFR 232.10). The Manager held that the showing in support of the protest did not conclusively refute the prima facie showing made in the Schoenburg application that he and his witnesses had examined the lands personally. The appellant requested that this issue of fact be referred to a Field Commissioner for determination after a hearing in the matter as provided for in the Rules of Practice approved March 20, 1956 (43 CFR 221.6). In the appeal she stated that the basis for dismissal of the protest was erroneous since her statement of facts in the matter, together with the affidavits of two witnesses having knowledge of the facts, is sufficient upon which to order a contest, the regulation (43 CFR 221.3) 1/ requiring submission of facts in the contested matter which if proven would render the entry subject to cancellation, and, secondly, that it was an abuse of discretion for the

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1/ Rules of Practice in effect prior to amendment of March 20, 1956.

Manager to accept the Schoenburg filing on April 11, 1955, and to delay notifying her that her original application was defective because it was not accompanied by the necessary initial purchase money.

The records show that Mrs. Claverie's original application was received in the Land Office on April 1, 1955, and that it was returned to her by office notice of that date with advice that it could not be serialized and accepted for filing because it was not accompanied by the required purchase moneys of 25 cents per acre or fraction thereof (43 CFR 232.14c). The application was returned to the Land Office accompanied by payment of initial purchase moneys totalling $56.25 on April 21, 1955, at which time it was assigned serial number Los Angeles 0131995. On the following day, April 22, 1955, Mrs. Claverie was notified action on the application would be suspended for adjudication of prior conflicting application Los Angeles 0131580. This notice of suspension was rescinded by decision of the Manager on May 16, 1955, and Mrs. Claverie was required to amend the application to include only 160 acres (208.79 acres had been applied for) because of the fact that the lands involved are in the Imperial Irrigation District and to furnish supplemental data regarding availability of water for permanent reclamation of the lands and whether there are any taxes or assessments due and unpaid on the land. However, by decision of June 8, 1955, the Manager again suspended action on the Claverie application pending final disposition of the intervening application of Schoenburg, which was received in the Land Office on April 11, 1955, and called upon Mr. Schoenburg to reduce the area involved to 160 acres and to furnish the same supplemental data which had been required previously of Mrs. Claverie. It does not appear from these facts, established in the record, that there was any abuse of discretion on the part of the Manager nor that there was any undue delay in the notice to Mrs. Claverie of the necessity for payment of initial purchase money to initiate any segregative rights in the lands as a result of her application, entitling it to record in the Land Office. In fact, the record shows this notice was written on the same day on which the defective application was received.

As to the other specification of error, the appellant is correct in stating section 221.3 of the Rules of Practice in effect prior to the amendment of March 20, 1956, provides for submission of an affidavit, corroborated by the affidavit of at least one witness having knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation. The showing contemplated under this regulation is required to be factual and a substantial basis for contest. It does not appear that the Manager was in error in considering that the allegations in the

affidavits of Mrs. Claverie and her witnesses, Lula Mae Bivens and Lucile Bivens, were insufficient to establish that Mr. Schoenburg and his witnesses had not examined the lands personally as claimed by them. The affidavits rather contain a statement of facts from which the protestant infers that Mr. Schoenburg and his witnesses had not examined the lands personally prior to June 21, 1955, when they inquired of the affiants as to the location of the lands. There is no direct refutation of the statements of Mr. Schoenburg and his witnesses that they had examined the lands applied for personally.

Nevertheless, examination of the record pertaining to the Schoenburg application reveals that it must be rejected on another basis, namely, the failure of the applicant to meet the requirements of the Manager's decision of July 11, 1955, within the time allowed therefor. This decision rejected the amended application of Mr. Schoenburg, including lots 11, 12 and 13, sec. 35, T. 16 S., R. 15 E., and lot 7 sec. 2, T. 17 S., R. 15 E., and allowed him 30 days from notice thereof within which "to furnish a certificate of an official of the Imperial Irrigation District as to the availability of water for irrigation of the land involved, and a statement whether there are any unpaid taxes or assessments against the land" or to appeal. The record shows the required statement of availability of water for irrigation of the lands was received in the Land Office on August 11, 1955; however, the statement of unpaid taxes or assessments against the land was not received in the Land Office until September 9, 1955. The Manager's notice to Mr. Schoenburg on August 15, 1955, acknowledging receipt of the certificate of availability of water and reminding Mr. Schoenburg that the statement regarding taxes on the lands had been omitted, did not extend the time for compliance with the requirements of his decision of July 11, 1955, and in the absence of such extension of time, the failure of the applicant to comply fully with the requirements of the decision of July 11, 1955 within the time allowed therefor must be considered to result in a loss of priority of filing as against the intervening application of Wilma I. Claverie for lots 11, 12 and 13 sec. 35, T. 16 S., R. 15 E. Application Los Angeles 0131580 of Charles Schoenburg is therefore rejected to this extent (43 CFR 231.16b), and this rejection will become final 30 days from notice hereof in the absence of an appeal herefrom to the Secretary of the Interior. The application remains intact as to the balance of the lands applied for therein, lot 7 sec. 2, T. 17 S., R. 15 E.

The Claverie application is entitled to further processing as a valid application received April 21, 1955.

Hearing in the matter is not required and the request therefor is denied.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached. In the event of appeal, the adverse party to be served with notice thereof is Wilma I. Claverie, c/o Sturdevant & Morrow, Attorneys at Law, Suite 201, Rehkopf Building, El Centro, California.

Lawrence Wozley
Director

Attachment

DISTRIBUTION:

Messrs. Sturdevant & Morrow, Attorneys at Law, representing Appellant (Registered Mail)
Mrs. Wilma I. Claverie (Regular Mail)
Mr. Charles Chorna, Attorney at Law, representing Appellee (Registered)
Mr. Charles Schoenburg (Regular Mail)
Hon. James Roosevelt, Member of Congress
Lands Staff Officer (1)
Appeals List No. 1
FAP

In reply refer to:

Los Angeles 0126411
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION December 6, 1956.

Eugene L. Robideaux : Desert Land Application

Manager's Decision Affirmed

Eugene L. Robideaux has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated March 11, 1955, rejecting his desert land application (Los Angeles 0126411), filed under the provisions of the Desert Land Act (43 U.S.C. 1952 ed., sec. 321 et seq.). The application was rejected on the basis of classification order No. 140, effective April 27, 1949 under which the land sought is classified under the Small Tract Act for lease and sale for homesites only, and therefore the land applied for is not subject to appropriation under the desert land public land laws.

The appellant requests a reclassification of the land. He contends that a reclassification of the land sought would be justified in that (1) the land would be more highly developed under his desert land entry than it would be under small tract lease, (2) the rocky terrain and arid climate are ideal and suitable for his purposes -- cultivation of carob trees, and that (3) there is no other land available which is suitable for his purposes.

At the time appellant filed his application, the land sought was classified for lease and sale pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(a). Such a classification constitutes a valid segregation of the land for small tract purposes and the manager was correct in rejecting the application for desert land entry.

If a classification is adverse to an applicant, the burden is upon him, should he appeal the classification, to show in what respect the adverse classification is in error. The applicant must show by positive and substantial evidence that the lands are more suitable to the uses which he proposes and that the adverse classification is erroneous. Unsupported statements of opinion can not defeat

the positive findings of a prior classification report. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The appellant in his appeal has submitted only unsupported statements of opinion and they are without merit here as grounds for a reclassification of the land applied for by him. Therefore, no basis for altering the Manager's decision can be found. The decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

A. H. Furr

Attachment

DISTRIBUTION:

Mr. Eugene L. Robideaux (Registered mail)
Land Staff Officer (1)
Appeals List No. 1
LAC

In reply refer to:
Los Angeles 0119306
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

February 5, 1957.

Edward Gerald Leap	:	Desert Land Application

Manager's Decision Affirmed

Edward Gerald Leap has appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated April 12, 1955, rejecting his application, LA 0119306, for desert land entry (43 USC, 1952 ed. Sec. 321). The application was rejected because the land is not suitable for agricultural development in that the soil consists of excessively heavy clay which is unfit for cultivation.

The appellant states in his appeal that he discussed the land sought with experienced farmers of the San Joaquin Valley, and that they are all of the opinion that the land is subject to successful and profitable development; that with the addition of sufficient gypsum the plastic condition of the soil would become friable; and that with the further addition of calcium and sulphur the PH content could be brought down to balance.

A complete field examination has been conducted for the entire Pahrump Valley. The pertinent part of such report as is applicable to this case indicates that the subject tract is in the southern lower portion of the lake playa area, and that the soil in this lowest portion represents the fine grained, inwashed sediments of an old lake bed. These sediments are so fine and compact that the only soil constituency is clay, moderately to highly charged with alkali which would immediately be concentrated on and near the surface under irrigation. The heavy clay soils do not absorb water but form a surface seal allowing little or no penetration. There is no subsurface drainage to the heavy subsoil due to the fact that there is no lower place in the valley to which excess water can percolate. The report continues with the conclusion that this excessively heavy clay soil type is entirely unfit for agriculture; that the playa is bare and flat and is too sterile to support even the hardy native vegetation. It was further noted that lake playa soils are generally not fit for cultivation and that they are not farmed in Pahrump Valley or elsewhere.

Lands may be opened for entry under the applicable land laws upon classification under Section 7 of the Taylor Grazing Ace, as amended, (43 USC 1952 ed., Sec. 315f), when such lands are more suitable for agricultural production than for the production of native grasses. Appellant's unsupported statements fall far short of the evidence required to overcome the positive findings of the field examination and topographic survey of the area to warrant any change in the classification of the land as unsuitable for agriculture. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

The reasons cited above indicate that the land applied for by the appellant cannot drain and therefore is not susceptible to irrigation and has such poor quality soil that it is unsuitable for desert land entry.

Accordingly, the decision of the Manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

G. H. Dixon

Attachment D

DISTRIBUTION:

Edward Gerald Leap (Registered Mail)
Lands Staff Officer
Appeals List No. 1
BF

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 25 2 48 PM 1957
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
Los Angeles 0109281
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 7, 1957

Registered Mail
Return Receipt Requested

DECISION

John B. Sims	:	Desert Land Application

Manager's Decision Affirmed

John B. Sims had appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated April 12, 1955, rejecting his application (Los Angeles 0109281) for desert land entry. (43 USC, 1952 ed., Sec. 321). The application was rejected because there was no source of water in sufficient quantity for irrigation purposes, and for the further reason that the soil consists of fine grained sand that is relatively sterile and submarginal for agriculture.

The appellant, in his appeal, states that he has discussed the land sought with experienced farmers in the San Joaquin valley and that they are all of the opinion that the land is subject to successful and profitable development. He further states that indicative of good soil is the considerable growth of greasewood on the land, and that if water were judiciously applied to the land, certain crops could be grown thereon.

The report indicates that there is no stream or other source of surface water by which the land sought by the appellant might be irrigated; that from past experience water in sufficient quantities will not be made available for irrigation purposes by the digging of any type of well. The report further indicates that the soil is sandy, sterile and submarginal for agriculture and that about 50% of the land is topographically unfit for any type of cultivation.

Lands may be opened for entry under the applicable land laws upon classification under Section 7 of the Taylor Grazing Act, as amended, (43 USC 1952 ed., sec. 315f), when such lands are more suitable for agricultural production than for the production of native grasses. Appellant's unsupported statements fall far short of the evidence required to overcome the positive findings of the field examination

and topographic survey of the area to warrant any change in the classification of the land as unsuitable for agriculture. Mary Refugio Jackson, et al. A-27236 (February 29, 1956).

The reasons cited above indicate that the land applied for by the appellant is not susceptible to irrigation and has such poor quality soil that it is unsuitable for desert land entry.

Accordingly, the decision of the Manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

A. A. Kurr

Attachment

DISTRIBUTION:

Herbert F. Hawkins, Attorney (Registered Mail)
John B. Sims (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 25 2 45 PM 1957
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:
Los Angeles 0121692
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 7, 1957

Registered Mail
Return Receipt Requested

DECISION

Beatrice Pimentel	:	Desert Land Application

Manager's Decision Affirmed

Mrs. Beatrice Pimentel has appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, dated April 12, 1955, rejecting her desert land application (Los Angeles 0121692), filed under the provisions of 43 USC 1952 ed. Sec. 321), because an economical water supply was not available and that withdrawals of ground water in excess of annual recharge would result in the depletion of ground water reservoirs. The application embraced lands in the Mesquite Valley described as the S½, Sec. 18, T 20 N, R 12 E., SBM., California.

The appellant states that it is the policy of the government to have this land cultivated, and alleges that of the 14,000 acres patented in the area that only about 2,000 acres are under cultivation; that it is her intention to cultivate the land sought to be entered.

A field examination of the entire area of the Mesquite Valley has been conducted including the lands embraced in the appellant's application. It was indicated therein that approximately 30 acres of the soil is uncultivable, and that the remainder is composed of fine and loamy fine sand as well as loamy and silty clay and cultivable only if an adequate water supply were gained. The report further indicated that it was problematic whether a sufficient water supply would be gained by sinking a very deep and expensive well. And considered in combination with the proposed irrigation of patented lands in the Valley, a siphoning off of the ground water in excess of annual recharge would result in a depletion of ground water reservoirs and substantial lowering of the water table, which is at present so deep as to make pumping economically unprofitable except for exceptionally high value crops. Based upon the findings of the field examination, it is concluded that water in sufficient quantities is not presently available for economic cultivation of the lands.

The appellant contemplates irrigation from a deep well, there being a total absence of surface waters in Mesquite Valley. Yet the few irrigation wells presently operating do not indicate that the water supply is either abundant or unlimited and the appellant's bare statement, that she would irrigate the lands, is not such evidence as to overcome the findings in the field report. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

The Department has held that it is proper to refuse to classify land for desert land entry when the existence of an adequate supply of irrigation water is not shown. Melvin W. Westwood, et al., A-26751, (August 20, 1954), Richard G. Peeples 48 I.D. 554, or that the allowance of entries would aggravate an already serious water situation. Joe B. Forehand, et al., A-26693, et al (December 9, 1954).

Accordingly, the decision of the Manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

A. H. Fuller

Attachment

DISTRIBUTION:

Mrs. Beatrice Pimentel (Registered Mail)
Lands Staff Officer
Appeals List No. 1
BF

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 25 2 43 PM 1957
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

appealed to Sec. ~~no appeal to Sec.~~

In reply refer to: modified & Remanded 11-19-57 A-27509

Los Angeles 097723
084802
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1957

Certified Mail
Return Receipt Requested

DECISION

Hattie M. Fults
Ernest Maloof

Desert Land

Manager's Decision Affirmed

Hattie M. Fults, through her agent and attorney in fact, J. Edward Kahlow, has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated April 16, 1956, which rejected her desert land application (Los Angeles 097723) filed pursuant to the act of March 3, 1877, as amended (43 U.S.C. 1952 ed., sec. 321).

While it appears that Mr. Kahlow may not be eligible to conduct the appeal in appellant's behalf, there are sufficient reasons, as set forth below, for affirming the Manager's decision.

It appears from the record that the land involved[1/] was originally included in desert land entry L. A. 054479 allowed to Mary E. Noyes on August 25, 1942. On April 6, 1949, the acting manager of the district land office at Los Angeles mailed an expiration notice to Mrs. Noyes, which stated that the desert land law required the submission of final proof within 4 years from the date of entry, that the statutory life of her entry had expired without the requisite final proof having been made, and that she was therefore allowed 90 days from receipt of the notice to show cause why the entry should not be canceled. The expiration notice, which was sent to Mrs. Noyes by registered mail, was returned, unclaimed, to the district land office.

On June 20, 1949, Margaret Redmond filed an application to contest the Noyes entry. Mrs. Redmond's application to contest was rejected and the rejection was affirmed by the Associate

1/ The land is the SE¼ sec. 18, T. 10 S., R. 14 E., S.B.M., California.

Director of the Bureau of Land Management on January 27, 1950. Mrs. Redmond appealed to the head of the Department and the rejection was affirmed by the Solicitor on August 21, 1950. 2/

The cancellation of the Noyes entry was held in abeyance pending final determination of Mrs. Redmond's application and was not canceled until September 18, 1950.

Desert land application, Los Angeles 084802, was filed by Ernest Maloof on September 19, 1950. In his application he stated that the land was not occupied, improved or appropriated by any other person claiming it. On October 19, 1950, Mrs. Redmond filed desert land application, Los Angeles 085041, (witnessed by Mr. Kahlow) which also contained the statement that the land was not occupied, improved or appropriated by any other person. Some time prior to June 13, 1951, Mr. Maloof wrote the Manager at Los Angeles informing him that there was a trespasser on the land. On that date his letter was forwarded to the Regional Chief, Division of Lands for appropriate action. On September 18, 1952, Mr. Maloof's entry was allowed for the SE$\frac{1}{4}$ sec. 18. The entry was cancelled on October 8, 1952 and Mr. Maloof's application held suspended pending adjustment of the trespass. Although cancellation of the entry was error, Johnnie E. Whitted, Bill Smith, 61 I.D. 173 (1953), no objection was raised by Mr. Maloof. A third application, Los Angeles 097723, was filed on October 13, 1952, by Mrs. Fults, appellant herein. This application contains the statement that parts of the land "are being occupied by Jap farmers who occupied the same for more than three years in trespass."

The application of Mrs. Redmond and Mrs. Fults were suspended pending investigation of the trespass and on June 3, 1954, the party in trespass, Mrs. Kimiko Ishimine, filed a desert land application, Los Angeles 0116580.

A report of the trespass investigation was submitted on March 20, 1956. This report contains affidavits by Mrs. Ishimine to the effect that on March 20, 1950, she entered into an agreement,

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2/ The Solicitor held that the allowance of an application to contest a desert land entry filed after cancellation proceedings against the entry had been instituted by the Bureau of Land Management was within the discretion of the Bureau and that Mrs. Redmond's application to contest could not be allowed because the grounds for the contest were shown on the records of the Department. Margaret M. Redmond, A-25907, (August 21, 1950).

apparently a lease arrangement, with Mrs. Noyes, the former entryman, under which she began to occupy and farm the land. The report states that Mrs. Ishimine obtained water for irrigation from the Imperial Irrigation District and cultivated 20 acres of land during the season 1950-51, 40 acres during the season 1951-52, and 70 acres during the season 1952-53. The crops raised were in the nature of perishable produce such as winter tomatoes and squash. According to the report the land was not cropped during the season of 1953-54 in order to recondition it. As to cultivation and crop production after that time the record is silent.

On April 16, 1956, the applications of Mrs. Redwood, Mrs. Fults and Mrs. Ishimine were rejected on the ground that Mr. Maloof had an allowable senior application. Mrs. Fults is the only party to take an appeal.

It is Mrs. Fults' contention that the application of Mr. Maloof should not be allowed because he falsified his statement that he had inspected the land and that it was unoccupied and unimproved. In support of this assertion Mrs. Fults, through Mr. Kahlow, has submitted affidavits of three persons who state that the land has been farmed in whole or in part since 1938, 1939, and 1949 respectively. These statements contain no information as to the identity of the persons who allegedly farmed the land nor the number of acres placed under cultivation. There is in addition to the affidavits a statement from the Superintendent of the Imperial Irrigation District to the effect that a water card was issued to Mrs. Ishimine on March 21, 1950. It would appear from this statement and the statement made by Mrs. Fults in her application as to the trespass, that her contentions as to occupancy and farming of the land concern the trespass of Mrs. Ishimine.

Mr. Maloof states that he and Mr. Harry Persky inspected the land involved "more than once" in January and February of 1950 and that there was nothing to indicate that the land was then occupied or that any recent attempts had been made to cultivate the land. This statement is supported by Mr. Persky's affidavit to the same effect. According to Mr. Maloof's affidavit he then went to the Land Office where he was informed that the land was not open for filing and that no one could go on the land until applications were filed. He further states that in reliance upon the information received, he later filed his application containing the statement that the land was unoccupied and unimproved.

According to the statement from the Operating Headquarters of the Imperial Irrigation District, submitted by Mr. Maloof, no water was furnished to the land prior to March 21, 1950. According to the report of the trespass investigation only 20 acres were cultivated during the 1950-51 season as it was impossible to level and prepare more than 20 acres that season. Whether this cultivation occurred before or after the filing of Mr. Maloof's application is not clear. There is no evidence as to when improvements were placed on the land by Mrs. Ishimine. Mr. Maloof states that no buildings were placed on the land in 1950. No evidence on this point was submitted by appellant. As to the trespass which occurred between the time when Mr. Maloof inspected the land and the time when he filed his application, it was evidently not readily observable since the Redmond application, filed a month later, also contained the statement that the land was not occupied nor improved.

In any event, though Mr. Maloof's application may have contained an incorrect statement, there is nothing to indicate that it was knowingly falsified as charged by appellant. It was apparently made in good faith, and did not result in injury to any persons claiming a valid interest in the land. The Manager's decision rejecting Mrs. Fults' application is therefore affirmed.

A question remains as to the extent to which Mr. Maloof's application can be allowed in view of the use made of the land by Mrs. Ishimine. As stated above, according to the report of the trespass investigation a total of 70 acres of the land involved was placed under cultivation by irrigation and crops. Whether any further use of the land was made by Mrs. Ishimine after the date of the trespass investigation does not appear from the record. Where land has been effectually reclaimed and is no longer in a desert state it is not subject to desert land entry and to the extent that an application for desert land entry includes such land the application must be rejected. Taylor v. Rogers, 14 L.D. 194 (1892); Campbell v. Sutter, 16 L.D. 40 (1893); Fisher v. Ballinger, 36 App. D.C. 511, (1911); reprinted in 40 L.D. 294; Len Everett, A-27050 (March 23, 1955).

The term "reclamation" has been held to mean the conducting of water in adequate supply to the land so as to render it available for distribution when needed. Claude E. Crumb, 62 I.D. 99, 101 (1955). Although crop production is not necessary element of final proof for a desert entry it is the most satisfactory method of showing the sufficiency of the irrigation and water supply, which

are essential to reclamation. Claude E. Crumb, supra, at 103.

It is concluded from the report of the trespass investigation that 70 acres of the land involved had been reclaimed during the 1952-53 season. Before Mr. Maloof's application can be allowed, a determination must be made, with the aid of a field examination if necessary, whether there is sufficient unreclaimed land remaining in the SE$\frac{1}{4}$ sec. 18 to support a desert land entry. If there is, Mr. Maloof's application should be allowed to that extent and rejected as to the rest. In view of the number of years having elapsed since the date of the trespass examination, and in the event that Mrs. Ishimine ceased to use the land after that time, consideration should also be given to whether the land reclaimed by her has since returned to a desert state in which event Mr. Maloof's application may be allowed as to the entire SE$\frac{1}{4}$ sec. 18.

If the trespass case has not already been closed, appropriate action should be taken to do so allowing Mrs. Ishimine a reasonable time in which to remove or otherwise dispose of any improvements to the satisfaction of the Bureau of Land Management.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee in each case . Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of an appeal by Mrs. Fults, the adverse party to be served is Ernest Maloof, c/o A. B. Fountain, Carlton Hotel, 529 S. Figueroa Street, Los Angeles 17, California.

(sgd.) Edward Woozley

Edward Woozley

Director

Attachment

DISTRIBUTION
Mrs. Hattie M. Fults (Certified Mail)
Mr. Ernest Maloof (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CCS

16425

appealed to Sec

In reply refer to:

affirmed A 27537, 1-24-58

Los Angeles 038672
038681
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1957

Certified Mail
Return Receipt Requested

DECISION

Marian Ruth Smith Loyd P. Nichols	:	Desert Land Entries (Extensions)

Decision of Manager Affirmed
as Modified

Marian Ruth Smith and Loyd P. Nichols each filed applications for an exten sion of time with the Manager, Land Office, Los Angeles, California, in which to make final proof on unperfected desert land entries. The applications were filed pursuant to the relief Acts of March 28, 1908, April 30, 1912, February 25, 1925 (43 U.S.C., secs. 333, 334, 336). The applications were denied for the reason that the entrymen had already been granted extensions pursuant to all of the applicable relief acts, and there were no provisions for further extension.

Appellants contend that they were unable to reclaim the land by irrigation due to circumstances beyond their control. They further stated that they paid regular assessments to the Palo Verde Irrigation District for the purpose of reclaiming the land and that the financing for the construction of necessary irrigation canals and development of the land would be made available by the passage of the "Small Projects Act." 1/

The record shows the entries were allowed in 1910. Under the provisions of the Desert Land Act (43 U.S.C., 1952 ed., 321, et seq.) the entrymen had a period of 4 years within which to submit proof of reclamation. That period has of course passed. Final proof was due in both instances in April, 1947, following suspension under authority granted pursuant to the Act of June 29, 1938 (52 Stat. 1232) at which time extensions were granted in accordance with the Acts of March 28, 1908,

1/ Approved August 6, 1956 (70 Stat. 1044).

and April 30, 1912 (43 U.S.C., 333, 334) to April, 1953. The entries were further extended to April, 1956, under the provisions of the Act of February 25, 1925 (43 U.S.C., 336). There is no authority whereby further extensions may be granted. 43 CFR 232.36 - 232.37.

In view of the foregoing, the Manager had no alternative but to deny the extensions requested and the decisions of May 11 and 18, 1956, are hereby affirmed.

Appellants may obtain a temporary suspension of cultivation and improvement operations to April, 1959, 2/ under the provisions of the Act of July 30, 1956 (70 Stat. 715) also known as Public Law 834. To avail themselves of benefits under that Act, they must file application for such suspension with the Land Office Manager, Bureau of Land Management, Los Angeles, California. Appellants are hereby allowed 30 days from receipt of this decision within which to file with the Land Office Manager application under the Act of July 30, 1956, supra., for suspension of their respective entries and notify this office when this has been done within the 30-day period allowed, or appeal to the Secretary of the Interior. In the absence of such action this decision will become final.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each application included in an appeal. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

A. H. Kurr

Attachment

DISTRIBUTION:
Mrs. Marian Ruth Smith (Certified Mail).
Mr. Loyd P. Nichols (Certified Mail).
Hon. John Phillips, Member of Congress
Lands Staff Officer
Appeals List No. 1
CFG

2/ Actual day in April corresponds with the date the entry would ordinarily terminate.

18229

In reply refer to:

Los Angeles 096758
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 5, 1957

Certified Mail
Return Receipt Requested

DECISION

Gene P. Zuck	:	Desert Land

Decision of Manager Affirmed

Mr. Gene P. Zuck has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Los Angeles land office dated January 5, 1956, rejecting his application for desert land entry on the E½ sec. 26, T. 8 N., R. 1 W., S.B.M., California. This land is in Stoddard Valley, and is within an area determined by the State of California Division of Water Resources to have soils suitable for irrigation agriculture.

Since this land was withdrawn from settlement, location, sale or entry and reserved for classification by Executive Order No. 6910, dated November 26, 1934, it must first be classified as suitable for desert land entry before an application can be allowed.

The field report which is the basis of the adverse classification acknowledged that this land would make especially good farm land - "if water were available." (Emphasis supplied.) But, "no water supply for their irrigation is known to exist." The mere fact that land would be suitable for agricultural development if there were sufficient water to irrigate the land is not enough to support a classification of the land as suitable for such disposal in the absence of a showing that water to irrigate the land is, in fact, available. Walter E. Scott, A-27293 (June 21, 1956.) Therefore, the land was classified as not suitable for desert land entry, and the application was rejected.

In his appeal, Mr. Zuck states that in the hills east and west of this property are springs which flow the year around; that a well located one-half mile north of the land has been pumping water successfully since 1937, and that the land is located in an area connected with the watershed of the San Bernardino Mountains by underground channels.

The water in the flowing streams is subject to bona fide prior appropriation; if the appellant had acquired in those streams "by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought . . . [or had] initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right," he could, conceivably, control a sufficient amount of water to effect the reclamation of the land for which he has applied. Under such circumstances, it might be proper to allow the entry. Cf. 43 CFR 232.13. However, the appellant has not shown that he has obtained, or is in the process of acquiring, such a right.

Therefore, the adequacy and availability of underground waters must be determinative. That such water, if available, may be utilized in California to reclaim land entered under the Desert Land Act no longer can be questioned. Ruby E. Huffman, et al., 64 I.D. 57 (1957).

The regulations provide that "[i]f the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands." 43 CFR 232.14.

To aver that the valley in which the land is located is connected with the watershed of the San Bernardino Mountains is not sufficient to establish the existence of a "water supply upon or near the land involved," especially in view of the positive report by an experienced field examiner that no subterranean water is known to exist in the area. The appellant refers to a well one-half mile away, but no details are given as to the volume of its discharge, the area cultivated, the type of crops raised, or the cost of reclamation.

A field report is not, of course, unassailable, and this report has been modified when convincing evidence submitted by persons qualified to give expert opinions has seemed to warrant a departure from the recommended classification. Cf. Louise E. Safarik, et al., BLM 0129037 (February 10, 1956); Elmer Richard Wright, et al., A-27020 (February 28, 1955); Charles C. Bogardus, A-27219 (November 23, 1955); Leonard E. Noren, et al., A-27147 (August 1, 1955). But merely to

state that facts are not as represented in a classification is not sufficient to show in what respect the adverse classification is in error. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

Accordingly, the decision of the manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

John B. Picco

Attachment

DISTRIBUTION:

Gene P. Zuck (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 096389
096421
096436
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 16, 1957

DECISION

Catherine M. Penfield Robert E. Anderson Ernest Kruger	:	Desert Land

Manager's Decisions Affirmed in Part

This is an appeal from the decisions of the Manager of the Los Angeles Land Office dated April 5, 1955, rejecting Mrs. Penfield's application in its entirety and partially rejecting applications of Messrs. Anderson and Kruger because of conflict with the grant to the Metropolitan Water District of Southern California under Public Law 188, 72d Congress, approved June 18, 1932 (47 Stat. 324).

The records disclose that the Metropolitan Water District of Southern California, hereinafter referred to as the water district, on May 15, 1939 filed application, Los Angeles 055581, under the provisions of the Act of June 18, 1932, supra, for certain described public lands for use as a wasteway area, which includes portions of sections 31, T. 4 S., R. 16 E., and sections 3, 4 and 5, T. 5 S., R. 16 E., S.B.M., California, which embrace some of the lands sought by the appellants for desert land entry. The water district's application was approved May 28, 1940. The lands acquired were paid for by said water district at the rate of $1.25 per acre, as provided in the granting act. The lands extend in a southeasterly direction from the water district's Eagle Mountain pumping plant for a distance of 12 miles.

The sole ground for the appellants' appeal is the bare assertion that the subject land is in fact vacant, unoccupied and unimproved and that said applicants for desert land entry are willing to have their applications allowed, subject to the rights of the Metropolitan Water District of Southern California as set forth in the Act of June 18, 1932.

The water district contends that the areas acquired by it are now and will continue to be necessary for the uses and purposes of the water district in the operation of its Colorado River Aqueduct. Such lands form a natural wasteway from its Eagle Mountain pumping plant and must be retained in the event it becomes necessary to discharge water from sections of the acqueduct. Since such areas are subject to inundation in the event of such discharge, no improvements can be permitted. The water district urges that the applications of the appellants in so far as they are in conflict with prior rights granted to the water district, should be denied.

The water district submitted a plat (Exhibit A SW) showing its entire acreage and use and indicating thereon the conflicts of the applications of the appellants.

The granting act of June 18, 1932, supra, provides that the Metropolitan Water District of Southern California is granted all lands belonging to the United States, situated in Los Angeles, Riverside and San Bernardino Counties for enumerated purposes which include rights-of-way, dumping grounds, flowage, canals and ditches, etc., effective upon the filing and approval of a map or maps showing the boundaries and extent of lands and the payment of $1.25 per acre for the lands conveyed "other than a right of way for the aqueduct." The act further provides that upon "cessation of use of the land granted for the purposes of the grant the estate of the grantee * * * shall terminate and revest in the United States."

The water district upon compliance with the terms of the act, on May 28, 1940, acquired a base or qualified fee to the lands embraced in application Los Angeles 053581. So long as the water district uses said lands for the purposes stated in the granting act, it is vested with title thereto and they are no longer unappropriated lands nor are they subject to further alienation by the United States until such time as said lands or portions thereof are either relinquished or cease to be used for the purposes specified in the granting act. California Electric Power Company, 58 I.D. 607.

The records reveal that not all the lands embraced in the application of Mrs. Penfield are within the grant to the water district. Consequently, so much of the decision of the Manager, in so far as it rejected her application covering land not within the grant to said water district, is reversed.

The records also disclose that the legal description contained in the Manager's decisions partially rejecting the application of Messrs. Anderson and Kruger as to the land in conflict with the grant to the water district, in part are not accurate. Specifically,

the conflicting areas are in Lot 2 of the NE¼ sec. 5 and in Lot 1 of the NW¼ of sec. 4, T. 5 S., R. 16 E.

The decisions of the Manager relating to those lands sought by all the applicants which are in conflict with the grant to said water district, are affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee (in each case). Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached. In the event of appeal by the desert land applicants the adverse party to be served through its General Counsel is the Metropolitan Water District of Southern California, 306 West Third Street, Los Angeles 13, California.

When this decision becomes final the records of these applications will be returned to the Bureau's Assistant State Supervisor at Los Angeles, California, for (1) field examination of the lands sought which are not within the grant to the water district, (2) consideration as to whether the applicants have acquired an appropriable water right sufficient to reclaim all of the irrigable portion of the lands, and (3) determination as to whether the lands are suitable for classification under the desert land laws.

For the Director:

R. H. Fuller

Attachments

DISTRIBUTION:

Messrs. Victor Ford Collins and Frank J. Kanne, Jr.,
Attorneys for Mrs. Penfield and Messrs. Anderson
and Kruger (Registered Mail)
Mrs. Catherine M. Penfield (Regular Mail)
Mr. Robert E. Anderson (Regular Mail)
Mr. Ernest Kruger (Regular Mail)
The Metropolitan Water District of Southern California,
Attn: General Counsel--(Registered Mail)
Lands Staff Officer
Appeals List No. 1
WHW

In reply refer to:
Los Angeles 0102830
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 12, 1957

Certified Mail
Return Receipt Requested

DECISION

Gertrude W. Mayer : Desert Land

Appeal Dismissed

Gertrude W. Mayer has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated April 12, 1957, which rejected her above-numbered desert land application.

The Manager stated that his decision was subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with the Departmental regulations, 43 CFR Sections 221.1 to 221.5 inclusive and with other pertinent sections of the regulations pertaining to practice before the Bureau. The regulations were revised effective May 1, 1956, and are found in 43 CFR 1956 Supp. Part 221. They were set forth in the information sheet attached to the decision.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> ". . . The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the regulations is as follows:

> "Statement of reasons; written arguments, briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 . . . ."

Section 221.98 provides:

"Summary dismissal. An appeal to the Director . . . will be subject to summary dismissal . . . for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; . . . "

Appellant filed her notice of appeal on May 13, 1957. A statement of reasons should have been filed not later than June 12, 1957, the thirtieth day after the notice of appeal was filed, No such statement has been received, and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the regulations. The appeal is therefore dismissed.

Gertrude W. Mayer is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached."

At such time as this decision becomes final, appropriate refund of the moneys deposited with the application will be made.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mrs. Gertrude W. Mayer (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CCS

21592

In reply refer to:

Los Angeles 0102828
0102829
0102928
0102948
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 12, 1957

Certified Mail
Return Receipt Requested

DECISION

Edith E. Seccombe et al.	:	Desert Land

Appeals Dismissed

Edith E. Seccombe, Clinton F. Seccombe, Theodore H. Schiermeyer and William W. Sallmen have appealed to the Director of the Bureau of Land Management from decisions of the Manager of the Land Office at Los Angeles, California which rejected their applications for desert land entry.

The Manager stated that his decisions were subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with 43 CFR 221.1 to 221.5 inclusive and with other pertinent sections of the rules of practice.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> ". . . The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 . . ."

Section 221.98 provides:

"Summary dismissal. An appeal to the Director . . . will be subject to summary dismissal . . . for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; . . ."

Appellants filed their separate notices of appeal on May 9, 1957. Statements of reasons should have been filed not later than Monday, June 10, 1957 since the thirtieth day fell on Saturday, June 8, 1957. The statements of reasons were delivered to the Land Office on June 12, 1957, and were not filed in the office of the Director until June 17, 1957. The appeals are therefore dismissed.

Appellants are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D.C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee in each case. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director

John B Piccolo

Attachment

DISTRIBUTION:

Mrs.Edith E. Seccombe (Certified Mail)
Mr. Clinton F. Seccombe (Certified Mail)
Mr. Theodore H. Schiermeyer (Certified Mail)
Mr. William W. Sallmen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
FF

appeal to Sec
Deffective appeal dismissed
decision modified A-27579 - 7-3-58

In reply refer to:
Los Angeles 0115445 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 23, 1957

Certified Mail
Return Receipt Requested

DECISION

Eric W. Erickson, et al. : Desert Land Applications

Manager's Decisions Modified;
Cases Remanded

Mr. Eric W. Erickson and six others have appealed to the Director of the Bureau of Land Management from decisions of the Manager of the Los Angeles, California, Land Office, rejecting their applications for desert land entry. The appellants applied for land in Township 9 North, Range 4 West, San Bernardino Meridian, California, and all were rejected, in a number of decisions written in February and April, 1956, on the ground that there is no water available in sufficient quantity to reclaim the land. All of the applicants had indicated that they intended to develop underground sources of water to effect the reclamation of the lands.

Because of the proximity of the lands to each other, and the identity of issues involved, all of the appeals will be considered in this decision. For the sake of convenience, the three groups of appellants, further identified in Appendix "A", will be referred to as the Erickson applicants, the Robinson applicants, and the Beattie applicants.

In these cases, the Manager's adverse action was based upon information contained in a report on the Mojave River Drainage Area prepared in the field in 1954. In that report, certain areas were designated as being within the zone of influence of the seepage waters of the Mojave River. It was found that within that area, there was probably a sufficient supply of underground water to irrigate the overlying lands. Outside this area, the report states, it would not be possible to obtain adequate water for irrigation purposes. It was recommended that the lands lying outside this area be classified as not suitable for desert land entry. The applicants' lands were accordingly so classified.

All of the appellants have submitted some evidence to controvert the finding of the field report. The Beattie applicants have submitted excerpts from a "Hydrological Report on the Helendale Basin

of the Mojave River," prepared by George W. Tweeddale. This report tends to show the existence of underground water in the general area of the tracts on which they seek entry. A report prepared by Verne L. Cameron, a geologist and hydrologist, to the effect that water can be developed on their proposed entries has been submitted by the Robinson applicants. Those filing under the aegis of Mr. Erickson assert that water is being developed in quantity in areas near the properties filed on. All of the applicants have requested special land use permits to drill for water on the lands for which they have applied.

In a previous group of appeals involving lands in the same township as that in which the tracts of the present applicants are located, the reports of Mr. Tweeddale and Mr. Cameron were found to be sufficiently compelling to warrant the remanding of the cases for the development of further evidence. Louise E. Safarik, et al., Los Angeles 0129037 et al., February 10, 1956. That decision states in part:

> Appellants' hydrologists claim that a considerable leakage from the Helendale Basin finds its way, first westward then northward, through the subsurface rocks to the general area of the lands involved in this appeal; and that bedrock restrictions to the north and west confine this water. Since the field report describes only in general terms the areas recommended for rejection and in view of the specific reports by experts of appellants that the land is cultivable under the desert land and homestead laws, the cases are remanded for further evidence specifically directed to each of the applications involved since reliance on the area report as a conclusive basis for classification of each of the particular tracts involved seems inequitable.

This decision is in accord with the principle that a general area classification must give way to a specific study of particular tracts in the area. Leonard E. Noren, et al., A-27147 (August 1, 1955).

In the Safarik case, the Los Angeles Land Office was directed to examine the tracts applied for by the appellants, and reconsider the applications on the basis of that examination. In the Noren case, the appellants were allowed to submit whatever evidence they desired to disprove the classification. This latter method seems more consonant with the position of the Department that "the burden is on the applicant to show by substantial evidence that the adverse classification is erroneous." Della Lee Halloran, A-27433 Supp. (May 31, 1957).

Since, on the basis of reports by Messrs. Tweeddale and Cameron, applications for desert land entries in the same township have in the past been remanded for the development of further evidence, it seems incumbent upon this Bureau to accord the present applicants the same opportunity to show the presence of water upon the lands for which they have applied.

Since there is no absolute proof of the presence of ground water short of the drilling and testing of a well, experimentation to ascertain whether there is a suitable water stratum available under these particular tracts is needed. This can be accomplished at the expense and risk of the applicants by means of a special land-use permit to drill an exploratory well on a small part of the land applied for. Although this may involve the expenditure of large amounts of money to no avail, the special land-use permit is, in this respect, no more hazardous than the desert land entry itself.

However, it should be noted that even if it be determined that sufficient water is available, the granting of the special land use permits and the pending of the desert land applications will not prevent the appropriation of the land under various public land laws.

It might be well at this point to examine the requirements of the Desert Land Act, with respect to water rights, both at the time of entry, and at the time for submitting final proof, especially in view of Mr. Erickson's statement that the Desert Land Act requires the cultivation of only one-eighth of the land applied for, and that it is therefore incorrect to require a showing of sufficient water to irrigate an entire 320 acre tract.

The Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.) authorizes the disposal of arid lands to citizens who are willing to reclaim them "by conducting water upon the same." Water is the sine qua non of reclamation. Therefore, where it appears that water is not available for the reclamation of land, the land may not be disposed of under the Desert Land Act. Victor Edwin Renaud, A-25595 (February 14, 1949). This is the principle on which the instant applications were rejected.

The regulations state that no desert land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought; or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. 43 CFR 232.13. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply, upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands. 43 CFR 232.14.

At the time final proof is made, although only one-eighth of the area need be under actual irrigation, the entryman must show a water right entitling him to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry. 43 CFR 232.32. If such a showing cannot be made, the final proof will not be accepted. In this connection, it has been well said:

"In affording to individuals an opportunity to obtain patent to valuable lands by reclaiming them, the Congress is inviting the adventurous to a precarious enterprise. The regulations warn the applicant that the reclamation effort is full of risks, but beyond putting the applicant on guard they do not protect him. They leave it to him to calculate the risks and take or reject them, as he chooses. The regulations are liberal toward the applicant in allowing him to enter the land if there is plausible presumptive evidence that he will have an adequate and constant water supply for its reclamation. But the rules are not tender towards him at the time of final proof if before then some unforeseen eventuality shall have occurred to make reclamation seem impossible. In such case, whether the happening of the contingency result from natural causes or from the interposition of man, the regulations protect the interest of the whole people in their lands and deny patent to the individual despite his disappointment and his loss of time and money." Ezra M. Carter, et al., A-26165 (October 5, 1951).

To require the applicants to demonstrate the existence of water underlying the tracts for which they have applied minimizes to some extent the hazard which is inherent in all applications to reclaim land under the Desert Land Act, for the expenditures of money which accompany large scale farming activities can not now be made until the necessary water has been developed - and should the water not be developed, those expenditures will not be made.

For this reason, and in compliance with the requests of the applicants, the cases are remanded to allow the applicants to apply for special land-use permits to drill for water, and thereby overcome the findings of the field report on which the adverse classification was made.

Since it is in the public interest not to have these tracts too long subject to the inchoate claims of prospective entrymen, the special land-use permits shall be issued for a period not to exceed 18 months, and shall not be renewable. (Cf. 43 CFR 258.12). An applicant who intends to demonstrate the presence of water by drilling for it must apply for the special land-use permit within thirty days from the receipt of this decision. Otherwise, the cases shall be closed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in the Office of the Director of the Bureau of Land Management, Washington 25, D. C., within 30 days from the receipt of this decision. An appeal by one applicant will not be considered as an appeal for any of the others. Each separate appeal must be accompanied by a $5.00 filing fee. A statement of the reasons for each appeal may accompany the notice of appeal; in any event, a statement of reasons must be received in the Office of the Secretary of the Interior within 30 days from the time of the filing of the notice of appeal. Strict compliance must be had with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent

sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

Attachments

DISTRIBUTION:

Each applicant (Certified Mail)
Hon. John W. McCormack (M.C.)
Lands Staff Officer
Appeals List No. 1
MG

Appendix "A"

Los Angeles Serial Number	Name and Address of Appellant	Land Applied for in T. 9 N., R. 4 W., S.B.M.
0115445	Eric W. Erickson 3211 Riverside Drive Los Angeles, California	N½ Sec. 3
0115444	Bror W. Schodin 427 West 5th Los Angeles, California	S½ Sec. 3
0115442	Mrs. Patricia L. White 4966 Franklin Avenue Los Angeles, California	S½ Sec. 4
0114086	Harold Eugene Robinson 5414 Century Blvd. Lynwood, California	S½ Sec. 8
0114087	Loyd J. Robinson 5532 Olanda Street Compton, California	N½ Sec. 8
0131299	Mrs. Mary B. Beattie 2001 Turnbull Canyon Rd. Puente, California	S½ Sec. 2
0131300	Roy N. Beattie, Jr. 2001 Turnbull Canyon Rd. Puente, California	N½ Sec. 2

In reply refer to:

Los Angeles 0134353
5.04g

DOCKET FILES

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 27, 1957

Certified Mail
Return Receipt Requested

DECISION

Imperial Irrigation District	:	Public Sale Application

Manager's Decision Affirmed

Imperial Irrigation District, a political subdivision of the State of California, has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated June 27, 1955, rejecting its application for public sale of Lots 1, 2, 3, and the E½NW¼ sec. 25, T. 16 S., R. 21 E., S.B.M., California (subject to existing easements and rights of way), under the second proviso of the Public Sale Act, as amended (43 U.S.C., 1952 ed., sec. 1171). The application was rejected because the lands were withdrawn from disposal on February 3, 1903, under the Reclamation Act of June 7, 1902 (43 U.S.C., sec. 371, et seq.), and were also withdrawn by Executive Order of January 9, 1884, for an Indian Reservation.

The appellant contends that the "Agreement with the Yuma Indians in California" of December 4, 1893, confirmed by sec. 17 of the act of Congress, approved August 15, 1894 (28 Stat. 332), provided that the lands sought, among other lands, were ceded to the United States by the Indians. It is contended that, by the terms of the Indian Treaty and the act of August 15, 1894, the lands became part of the public domain, open to settlement and sale under the provisions of the general land laws of the United States.

The lands of the Yuma Indian Reservation were created and reserved from further appropriation under the general land laws by the Executive Orders of July 6, 1883, and January 9, 1884. These Orders were implemented by section 17 of the act of August 15, 1894. That Act confirmed the Agreement with the Indians and provided, among other things, that title to the irrigable lands in the Reservation would remain in the Indians and/or be disposed of for their benefit

in the manner specified in the act. Article VI of the Agreement provided that "All lands upon said reservation that can not be irrigated are to be open to settlement under the general land laws of the United States." The ratifying act (section 17 of the act of August 15, 1894 (28 Stat. 332, 336) provides "That all of the lands ceded by said Agreement which are not susceptible of irrigation shall become a part of the public domain, and shall be opened to settlement and sale by proclamation of the President of the United States, and be subject to disposal under the provisions of the general land laws." (Emphasis added).

It is true that the lands applied for are non-irrigable and that they are owned by the United States. However, at no time have the non-irrigable lands been opened to settlement and sale by proclamation of the President, as provided in the above-quoted paragraph of the act of August 15, 1894. Congress intended that the non-irrigable lands should not become a part of the public domain until they are made subject to settlement and disposition under the general land laws by Presidential proclamation. (Solicitor's Opinion M-28198, January 8, 1936). Not being part of the public domain, the lands applied for are not subject to disposal under the public sale law.

The records further show that the lands applied for are included in a Reclamation Withdrawal of February 6, 1903. The Department has consistently held that lands affected by a withdrawal are not subject to disposition under the public land laws. Alma Everett Morris, Jr., et al., A-27235 (December 12, 1955); Emily Juanita Miller, A-26966 (September 20, 1954); W. C. Dalzell, A-26346 (March 28, 1952); 43 CFR 230.12.

The Manager's decision is, accordingly, affirmed.

Imperial Irrigation District is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

The Imperial Irrigation District represented that it owned, in fee, all of the lands in the fractional S$\frac{1}{2}$ of section 25. The records of this Bureau fail to show that Lot 4 (fractional SE$\frac{1}{4}$ sec. 25) has ever been patented by the United States.

For the Director:

A. H. Swan

Attachment

DISTRIBUTION:

Imperial Irrigation District (Certified Mail)--Attn: J. E. Welch
Lands Staff Officer
Appeals List No. 1
Bureau of Reclamation, Washington 25, D. C.
BF

21592

Appeal to Sec

In reply refer to:

Los Angeles 0128491
0128492
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 9, 1957

Certified Mail
Return Receipt Requested

DECISION

Alvin A. Littlefield Gardner L. Reynolds	:	Desert Land Applications

Decisions of Manager Affirmed

The above-named individuals have appealed to the Director, Bureau of Land Management, from decisions by the Manager of the Land Office, Los Angeles, California, dated April 7, 1955, rejecting their desert land applications. The applications were filed pursuant to the Act of March 3, 1877 (43 U.S.C. 1952 ed., 321 et seq.). They were rejected for the reason that the lands sought were not properly described by legal subdivision in accordance with the Government survey.

The legal descriptions on the original applications describing the lands sought were by "metes and bounds", one of which does not "close" to encompass any land area. These applications were not acceptable since they did not describe the lands in accordance with the Government survey. 43 CFR 232.9(a) 1957 Supp. Therefore, the applications were suspended by the Land Office Manager for a period of 30 days to permit the applicants to furnish a proper land description. In response to the suspension notices Gardner L. Reynolds filed an amendment to his application wherein he redescribed the land in his application as the E½W½E½ Sec. 24, T. 29S., R. 39E., M.D. Meridian, California; and Alvin A. Littlefield amended his application to describe the W½W½E½ of the same Sec. 24. It was on the basis of these amended land descriptions that the applications were rejected.

Appellants argue in pertinent part that (1) due to the physical location of the remaining parcels they could not be laid out square, (2) that their claims comprise all of the remaining, available land in the section, (3) that if the land was described in any other manner there would be no means of ingress of egress for roads and power line rights of way, and (4) that both or the claims encompass a total of 80 acres of land and twice the amount of the forty acre requirement referred to in the decision rejecting their applications. Appellants allege further that if a forty-acre tract is the smallest legal

subdivision established by government survey then the eighty acres described by the amendments to their applications should constitute subdivisions and not merely "select parts of legal subdivisions". They therefore conclude that the Manager's objection pertains to the size of the tract sought rather than to the legal description as amended. Appellants also argue that the Manager's decision is not consistent with paragraph 232.7 of the regulations.

The regulation (43 CFR 232.7, 1954 ed.) provides in pertinent part that:

> "The land entered under the desert land laws should be in compact form, ***. Where, however, it is impracticable, on account of the previous appropriation of adjoining lands or on account of the topography of the country, to take the land in a compact form, all the facts regarding the situation, location, and character of the land sought to be entered and the surrounding tracts should be stated, in order that the manager may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the manager to determine whether or not, from the facts stated, the entry should be allowed. ***".

The regulations provide further that the application must contain a description of the land by legal subdivision. 43 CFR 232.9(a) 1957 Supp. The Department has held that a forty-acre tract or a fractional lot, 1/ being the smallest regular subdivision established by the Government survey consitutes the unit of the public lands for the purpose of determining their classification under the agricultural or the mineral land laws (49 L.D. 250) and in the matter of Rubert Ray Spencer, (60 I.D. 198) decided June 7, 1948 the Solicitor held:

> "***the long-established rule of the Department is that the quarter quarter section, or the fractional lot, is ordinarily the minimum unit of land for classification and disposal. L. S. Keye, A-24369, August 5, 1946 (unreported). Further division has been permitted only where peculiar conditions have required otherwise, or where Congress has specially provided otherwise. Edward A. Kelly, A-23430, December 31, 1942 (unreported)".

Deviations from the rule due to special circumstances have been rare. Ordinarily, the rule is waived only in those cases where no public interest would be prejudiced by the waiver and where the departure from the rule would facilitate the administration of the public lands. Rubert Ray Spencer, supra.

1/ There are no fractional lots herein involved

The subject public land was surveyed in 1877 and the plat of survey approved August 11, 1877 is of record at the Land Office, Bureau of Land Management, Los Angeles, California. The foregoing plat shows that Sec. 24, T. 29S., R. 39E., M.D.M. California consists of 16 forty acre quarter quarter sections. The applications under consideration as amended cover the E½W½E½ and the W½W½E½ Sec. 24 which when taken together occupy an area of land properly described by four forty acre subdivisions namely; the NW¼NE¼, SW¼NE¼, NW¼SE¼, SW¼SE¼ Sec. 24, T. 29S., R. 39E., M.DM. California. In view of the pertinent regulation and Departmental decisions in the matter of land description cited above, an application for only part of the land contained in any one of the foregoing forty acre subdivions must be rejected unless the applicant can conclusively demonstrate that a departure from the general rule is justified as a result of special circumstances and that departure from the rule will facilitate the administration of the public lands.

Appellant's contentions that there is no other way to lay out the land for agricultural development, that their applications cover all of the public land available, and that the allowance of their applications would permit ingress and egress, are not considered sufficiently conclusive showing to warrant a departure from the general rule.

Therefore, the decisions of the Manager were correct, and they are hereby affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each application included in an appeal. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Attachment

Director

DISTRIBUTION:

Alvin A. Littlefield (Certified Mail)
Gardner L. Reynolds (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

23464

The subject public land was surveyed in 1877 and the plat of survey approved August 11, 1877 is of record at the Land Office, Bureau of Land Management, Los Angeles, California. The foregoing plat shows that Sec. 24, T. 29S., R. 39E., M.D.M., California consists of 16 forty acre quarter quarter sections. The applications under consideration as amended cover the S½S½ and the N½S½ Sec. 24, which when taken together occupy an area of land properly described by four forty acre subdivisions namely: the N½N½, S½N½, N½S½, S½S½ Sec. 24, T. 29S., R. 39E., M.D.M., California. In view of the pertinent regulation and Departmental decisions in the matter of land description cited above, an application for only part of the land contained in any one of the foregoing forty acre subdivisions must be rejected unless the applicant can conclusively demonstrate that a departure from the general rule is justified as a result of special circumstances and that departure from the rule will facilitate the administration of the public lands.

Appellant's contentions that there is no other way to lay out the land for agricultural development, that their applications cover all of the public land available, and that the allowance of their applications would permit ingress and egress, are not considered sufficiently conclusive showing to warrant a departure from the general rule.

Therefore, the decisions of the Manager were correct, and they are hereby affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each application included in an appeal. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective Mar 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

Attachment

Director

DISTRIBUTION

Alvin A. Littlefield (Certified Mail)
Gardner L. Reynolds (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFC

Appealed to Sec
Affirmed A-27582 7-9-58

In reply refer to:

Los Angeles 0102168 etc.1/
094933 etc.2/
0102756 etc.3/
095951 etc.4/
098127 etc.5/
094936 etc.6/
0106599 etc.7/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 9, 1957

Certified Mail
Return Receipt Requested

DECISION

Mary Catherine Archer, et al.	1/	:
Annie May Hayes, et al.	2/	:
Genevieve L. Parker, et al.	3/	:
Rodney C. Hembree, et al.	4/	: Desert Land Applications
Murray Gomer, et al.	5/	:
Jack T. Roberts, et al.	6/	:
Max L. McKnight, et al.	7/	:

Decision of the Manager Affirmed Los Angeles 0102168, etc;
Desert Land Application Los Angeles 0122086 Rejected

The desert land applications of Mary Catherine Archer and 44 other individuals were rejected by decisions of the Manager, Los Angeles Land Office, dated June 5, 20 and 30, 1952; August 4 and 5, 1952; September 3, 1952; August 20, 1953; October 25 and 28, 1954; November 30, 1954; February 11, 1955, and March 3, 1955.

All of the applications were filed pursuant to the Act of March 3, 1877 (43 U.S.C. 1952 ed., sec. 321, et seq.)

1/ APPENDIX A
2/ APPENDIX B
3/ APPENDIX C
4/ APPENDIX D
5/ APPENDIX E
6/ APPENDIX F
7/ APPENDIX G

The appeals considered herein involve lands located in the same general vicinity as all of the lands are within township 3, 4 and 5 north, ranges 2, 3 and 4 east, S.B.M., California and within a common drainage basin known as "Johnson Valley". The character of the lands and circumstances relating to their suitability for desert land entry are relatively similar in all instances. Therefore, the 45 appeals are consolidated for consideration in this decision. There are also a number of conflicting applications and c classifications which will affect the disposition of the major portion of the lands involved. (See APPENDAGES A through G). Therefore the appeals are considered in relation thereto as well as the factor of suitability of the lands for desert entry.

Although no action was taken by the Manager on desert land application 0122086 of Hugh Montgomery, since it involves land in the same general area it has been included in this decision and is listed in APPENDIX F.

Henry Himmelfarb, attorney, has filed an appeal on behalf of 36 of the desert land applicants wherein he argues that (1) the agricultural possibilities are good as the soil, with the application of fertilizer, can be farmed successfully; (2) sufficient water can be developed from wells to produce various crops without depleting the water supplies of other users; (3) land conditions are similar to several ranches in Johnson Valley that are being successfully cultivated at the present time; (4) the valley is fed by drainage from the San Bernardino Mountains and that water can be obtained at a depth of 40 feet; (5) motion picture films submitted in connection with a previous appeal shows that the land can be successfully farmed on a commercial basis; (6) the land is not being used as an aerial gunnery range as stated in the Manager's decision or for any other military training purposes and can be better used for crop production.

Appellant also submitted copies of letters and statements from four persons who state they are acquainted with the land or some phase of its characteristics. These are as follows: (1) Leonard Ross, Manager, Padmal Farms who alleges he has looked at certain sections of land in T. 3 and 4 N., R. 4 E., that it is level enough that it could be put to grade to irrigate very successfully and that he has had experience with developing similar land in Antelope Valley which was put in alfalfa and pasture mixes and on which a small herd of registered cattle are now raised. (2) Edgar T. Moss, Driller-Subdivider of Lucerne Valley contends as follows:

" * * * I have drilled in that area and found water conditions to be good. In fact, * * * better than * * * Lucerne Valley * * *. I believe that Johnson Valley could be developed into a fine farming community * * *. The water level is comparatively shallow and there seems to be an abundance of water wherever a well has been drilled.

"Having drilled here in the desert for years and knowing conditions well, I do not hesitate to recommend Johnson Valley as an investment for developing both land and water."

(3)The copy of the letter and attached soil and water analysis prepared by Leon J. Lapides, Ph.D. indicate that ground water and soils from which the samples were taken do not contain toxic elements in amounts harmful to agricultural production and that the land could be built up by the application of manure. (4) By copy of a letter from John R. Henry, Executive Secretary for the PMA County Committee to W. J. Petersen, the Secretary stated:

"At present there are two ranches located there, one on the East and one on the West side of the area in which you indicated an interest. The ranch on the East is located in Section 19, T. 4 N., R. 3 E., and the one on the West is located in Section 30, 31, T. 4 N., R. 3 E.

"The ranch in Section 19 has approximately 40 acres of which some 20 to 25 acres is producing an average crop of alfalfa hay. The water on this ranch seems to be rather shallow and in such quantity and quality to do a good job of farming. The normal desert problems with alkali have been mild on this location.

"The ranch on the West, the Old Woman's Spring Ranch, has approximately 30 acres of new land going into cultivation during this year. To my knowledge they have had no serious problems with alkali. Their source of water is the artesian water from Old Woman's Springs and Cottonwood Springs. * * *

"* * * There is no major soil-type changes between these two ranches. * * *

"Two factors that will help govern the success or failure of any enterprise on the desert are water and

wind. There is no way to control the wind except by windbreaks which must have water. I know of no other available water in this valley other than that mentioned above."

Mr. Himmelfarb also requested a hearing to produce witnesses to testify that the land is better suited for agricultural purposes than for use as a military range or being left idle.

Lek Von Kaesborg, attorney has appealed on behalf of five of the applicants and Daniel T. Pecnik, on behalf of himself argues that: (1) the land is not being used for military purposes, and that it can better be used for agricultural purposes, with the application of fertilizer it can be farmed successfully and is suitable for development under the desert land laws; (2) land conditions are similar to several ranches in Johnson Valley that are being successfully cultivated at the present time and that enough water could be developed from percolating waters not used by anyone else to produce various crops successfully. Appellants also requested additional time to submit affidavits along with an oral hearing to produce witnesses to testify on their behalf.

Max L. McKnight, applicant L.A. 0106599, states that he contacted a well drilling company in Lucerne Valley which offered to guarantee an irrigation water supply and that he has been advised by the local Bureau of Agriculture that the soil is good and will grow crops with adequate water. He alleges further, that he has examined the land and it contains no more rock than any other part of Johnson Valley.

Kathryn D. Gates, applicant L.A. 0104894, covering the S½ sec. 20, T. 4 N., R. 4 E., contends that within a very short distance of her filing there is a very beautiful alfalfa field and that the operator has a lot of cattle and has prospered. She alleges that the shrubbery on the land is indicative of suitable soil and water conditions. With the foregoing appeal appellant referred to a copy of a statement by A. B. Saling, one of the applicants 8/, in which he alleges that he is well acquainted with Johnson Valley and agricultural developments there. Mr. Saling contends that Mr. Shehorn has developed an irrigation water supply by well from which he irrigates alfalfa and that a Mr. Rauseau has put down a 300 foot well which the driller says is adequate for the irrigation of 50 acres

8/ A. B. Saling, one of the original applicants, relinquished his application Los Angeles 094808 for the W½ sec. 29, T. 4 N., R. 4 E., on November 4, 1953.

of land. He also states that water flows from a spring known as "Cottonwood Springs" and that a forty foot well at the "Old Woman Spring" flows about 50 inches of water and that another flow has been developed which seems to flow about 2,000 gallons of water per minute.

Fred M. Sparks, applicant L.A. 0105743, alleges that upon inspection of the area he found water flowing in a nearby section, that wells are possible, and that the land can be irrigated as it has been demonstrated that alfalfa and other crops can be successfully grown. By his appeal he asks permission to take soil tests for the purpose of determining the suitability of the soil for agricultural purposes and prove that the land can be profitably developed for agricultural purposes. Fennis E. Wiggins, Jr., applicant L.A. 0126825, advanced a similar argument.

The record shows that a field examination covering a part of Johnson Valley was completed in 1949, which indicates that soils on the lands are coarse to fine sand to sandy silts, deficient in humus and mineral nutrients, and susceptible to severe wind erosion when the natural vegetative cover is removed. Moreover, parts of the lands were withdrawn for military purposes. It was on the basis of this record that 75 or more desert land applications were rejected.

As a result of subsequent applications filed for lands not covered by the original field examination and questions of fact concerning the character of the land in Johnson Valley, two additional field investigations were made in 1954 and 1956 and reports prepared therefrom. By these reports the major soil type is identified as "Hesperia Sandy Loam" interspersed with deposits of loose gravel and rock. These soils are coarse to medium textured, gritty, sandy loams that have a loose, porous structure, the upper 3 or 4 inches of which consists of an extremely incoherent material that is drifted by the wind. The valley is surrounded by low hills and mountain. Seasonal runoff from these hills has eroded away the soil in some places and deposited it to considerable depths in others. In general the soil merges with the subsoil at 5 to 10 inches from the surface. The record shows that there are no perennial streams in Johnson Valley; however, arroyos may run water for one to two days following heavy thunder showers. Nearly all subdivisions of the land are cut by active gullies extending from the surrounding hill lands to the lower elevations of the valley floor. Likewise nearly all of the subdivisions are strewn or interspersed with deposits of coarse sand, gravel, and boulders that have been washed from the hills during periods of heavy runoff. As a result of the foregoing, the original, smooth, uniform surface of the land has been generally changed to undulating and uneven profiles and is deeply trenched by channels and young valleys.

The only exceptions to the foregoing are variations in soil types which the field reports indicate exist in three isolated areas within the valley. These are as follows:

(1) There are a number of old lake beds located on the lower elevations of the valley floor which include all or nearly all of the following legal subdivisions:

T. 4 N., R. 2 E.
sec. 1; SE$\frac{1}{4}$NE$\frac{1}{4}$, SE$\frac{1}{4}$

T. 4 N., R. 3 E.
sec. 6; S$\frac{1}{2}$, S$\frac{1}{2}$SE$\frac{1}{4}$, NW$\frac{1}{4}$
sec. 7; N$\frac{1}{2}$NW$\frac{1}{4}$, NE$\frac{1}{4}$

T. 4 N., R. 4 E
sec. 8; NE$\frac{1}{4}$, N$\frac{1}{2}$NW$\frac{1}{4}$, SE$\frac{1}{4}$NW$\frac{1}{4}$, N$\frac{1}{2}$SE$\frac{1}{4}$, SE$\frac{1}{4}$SE$\frac{1}{4}$

Soils on the foregoing lands are clay to heavy clay loam identified in the field reports as "Lahontan clay loams and clays". They are very compact and become very sticky when wet and crack upon drying. The clay loams absorb water very slowly and commonly "puddles". The heavier clays occupy the lower depressions, are very impervious to water, have no surface drainage, and are ordinarily badly puddled.

(2) Soils on the S$\frac{1}{2}$ sec. 20, T. 4 N., R. 4 E., differ from the other lands as the major part are "Oakley Sands". These are very coarse sands susceptible to wind erosion and the bulk of the SW$\frac{1}{4}$ is covered by sand dunes which give way to nearly level but coarse sandy soils on the S$\frac{1}{2}$SW$\frac{1}{4}$. The balance of the S$\frac{1}{2}$ sec. 20 is rough hill land or rocky, coarse sandy land which is traversed by two washes that disect the land from north to south.

(3) The following lands are described in the field reports as "Hesperia Sandy Loams":

T. 4 N., R. 4 E.
sec. 19; SE$\frac{1}{4}$SE$\frac{1}{4}$
sec. 32; S$\frac{1}{2}$SW$\frac{1}{4}$
sec. 33; S$\frac{1}{2}$SE$\frac{1}{4}$

T. 4 N., R. 3 E.
sec. 15; S$\frac{1}{2}$S$\frac{1}{2}$
sec. 22 NE$\frac{1}{4}$SW$\frac{1}{4}$

The soils on these lands are relatively free of deposits of gravel and rock. However, as outlined below, experience to date on deeded lands in the valley on these same type of sites indicate that even these more suitable soils are extremely marginal for agricultural production at best due to the high land development costs, limited irrigation water supplies available and the high water requirement for the production of irrigated crops on the light, sandy soil sites involved.

It is true as stated by A. B. Saling, that the original artesian flow from the "Old Woman's Spring" on sec. 31, T. 4 N., R 3 E., has been increased to produce approximately 2,000 gallons of water per minute. This has been accomplished by drilling into a deep fault in the formation from which the artesian spring originated. The water supply from this fault is reported to be unrelated to the upper ground water table. 9/

The record shows there are ten or more wells in Johnson Valley. Six of these were drilled for irrigation purposes. The first was developed about 1948 and is located in sec. 19, T. 4 N., R. 4 E. The well is 252 feet deep and has a static water level of 62 feet. In operation, the well pumps 43 inches of water from a depth of 100 feet. The owner supplements the direct flow (approximately 43 inches) by a diversion from a reservoir which he fills either before or between irrigations. Though the owner of this well holds 160 or more acres of land in fee title he had developed no more than 40 acres of it for irrigation between 1948 and 1956. The field reports and statements in the record by W. C. Shehorn, the operator, indicates that 30 to 40 acres are all of the land that can be covered by the water supply from the well supplemented by the reservoir storage system. 10/

Another well located in sec. 24, T. 4 N., R. 3 E., was developed in 1953 or 1954. This well is 302 feet in depth with water bearing strata at 62 to 76 feet. The output of this well is about 40 inches which is about 50 percent of the capacity for the size well casing and pump equipment installed. There is nothing in the record to indicate that any land has been reclaimed to date by irrigation from this source of water supply.

Four other wells have been drilled in the past two to three years. One of these is located in the NW$\frac{1}{4}$ sec. 16, T. 4 N., R. 3 E. It is 203 feet in depth with a static water level of 100 feet. The owner reports the well will hold at an output of about 20 inches under continuous pumping conditions. Another well was drilled in sec. 9, T. 4 N., R. 4 E., into the bed of Melville dry lake. Water from this

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9/ Thompson, D. C., Mojave Desert Region, California, A Geographic, Geological and Hydrological Reconnaissance, United States Department of the Interior, Geological Survey, Washington, Government Printing Office, 1929 (water supply paper 578).

10/ This is the irrigation development that a number of the appellants referred to as being successfully cultivated, producing alfalfa, cattle, etc. The land is located near the valley floor which affords the minimum pump lift, and on a soil site classified as "Hesperia Sandy Loam" which is the most desirable type of site in Johnson Valley. W. C. Shehorn, the owner and operator, reports an expenditure of over $600 per acre for land he developed for irrigation.

well contains toxic minerals in amounts that preclude its use for agricultural purposes. Two attempts to develop irrigation wells in sec. 15, T. 3 N., R. 4 E., were unsuccessful. A hole drilled to a depth of 250 feet on the NW$\frac{1}{4}$ sec. 15 yielded no water whereupon a hole was drilled to a depth of 550 feet at a different location on the same section. This was also a dry hole.

The wells cited above are located on or near the valley floor where the elevation is 2,900 feet or less. The elevation increases to the south and west where most of the lands under desert land application are located and attains an elevation of about 3,400 feet near the base of the hills. Field reports show that depths to ground water become progressively greater with the increase in elevation.

The field report of August 24, 1956 states that a hydraulic engineer of the U. S. Geological Survey was contacted concerning the occurrence of ground water in Johnson Valley. Concerning the interview the field report states:

> " * * * there is no question that there is insufficient water in Johnson Valley for agricultural purposes. He pointed out that this is clearly seen in the limited watershed or run-off area and the low average annual precipitation. He further stated that extensive pumping of the ground water would lead to total depletion of the water and allow no one the utility of the water."

On the basis of studies by the San Bernardino County agricultural officials, an investment of approximately $250 to $275 per acre is a minimum investment required to develop this type of land and that development costs including measures to minimize wind erosion might cost $500 per acre or more. The one operator who had developed any land for irrigation by pumping from wells by 1956 reported an expenditure of over $600 per acre reclaimed. 11/

The unsuitability of the lands in Johnson Valley for agricultural purposes appears to hinge on a combination of factors any one of which renders the land marginal for agricultural purposes. The more important of these result from the immature character of the soils which vary from coarse, sandy loams having an extremely low water holding capacity and high water requirement to poorly drained clays and heavy clays on the valley floor (the old lake beds); inadequate water

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11/ See footnote 10/ above.

supplies; and high investment costs of reclaiming the land.

The land is located about 50 miles northeast from the metropolitan center of San Bernardino, California. There are extensive small tract developments throughout the foothill areas of the San Bernardino Mountains including parts of Johnson Valley. Land status records indicate that 1,450 or more small tract applications covering all or some part of the subject land have been filed. In view of the evident demand for land in the vicinity for small tract development purposes the Land Office records have been noted that all of the vacant public lands in the valley are under consideration for small tract classification.

The record indicates further that a considerable amount of the land has been selected by the State of California in exercise of indemnity rights pursuant to the Act of March 3, 1853 (10 Stat. 244) as amended. (See APPENDIX B). Moreover, certain of the lands are under application for state exchange pursuant to the provisions of Section 8 of the Act of June 28, 1934 as amended (43 U.S.C. 1952 ed., 315g). (See APPENDIX C.)

As a result of the intense demand for small tracts and the large numbers of other types of conflicting applications for the same lands in the vicinity, including the subject land in Johnson Valley, the Department has enunciated a policy with respect to land disposal policy for that area. The program outlined by this policy provides that:

(1) The Land Office records at Los Angeles to be noted that all of the lands are under consideration for small tract classification.

(2) Preference is to be given small tract classifications over competing applications for the same land provided the land can be properly classified as suitable for disposal under the Small Tract Act except for applications filed by the State of California for state exchange under the provisions of Section 8 of the Act of June 28, 1934 as amended (43 U.S.C. 1952 ed., 315g) to be considered on an equal value basis; or applications for state indemnity selections pursuant to the Act of March 3, 1853 (10 Stat. 244) as amended, if otherwise proper.

With respect to state indemnity selections the Department held in the matter of Nelson A. Gerttula, A-27325 decided June 20, 1957 that:

> "Applications made by the States in exercise of their lieu selection rights should, as a matter of principle, be honored over competing private applications for the

same lands, even though the latter may more nearly fit the characteristics of the lands. However, in order to merit preference consideration, the State should be diligent in exercising its selection rights and should make application within a reasonable period of time after the filing of any competing application".

Section 7 of the Taylor Grazing Act as amended (43 U.S.C. 1952 ed., sec. 315f), authorizes the Secretary of the Interior, in his discretion, to examine and classify any lands withdrawn by Executive Order No. 6910 of November 26, 1934, as were the lands involved in the present appeals, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable and suitable for any other use than for the use provided under the Act. Cf. William John Mauro, A-27318 (July 13, 1956); Cf. Ernest C. DeFord et al., A-26591 et al. (February 6, 1953); 43 CFR 296.1. In Nelson A. Gerttula, supra the Department held that:

> "In exercising the discretionary authority vested in him by section 7 of the Taylor Grazing Act, as amended, the Secretary may properly consider and weigh all factors which have a bearing on the suitability of the land for use or disposal, including the effect on the public interest."

The Department takes the view that "economic feasibility" must include public as well as private considerations. Though a particular project may be fully feasible for the individual, it may not be allowable because of the potential disturbance to over-all values in the area. It is the purpose to welcome and encourage the development of land suitable for agricultural purposes; however, such developments should not be at the exclusion of established land uses or other higher uses. Pertinent instructions of the Department concerning the classification of lands that may be desert in character provide:

(1) That the protection of the land resource requires prevention of attempts at desert land developments in areas clearly unsuited for that use.

(2) There must be reasonable evidence of an adequate water supply, sufficient to give economic life to the irrigation development.

Lands sought to be entered under the Desert Land Act, supra must be of a character susceptible of reclamation for crop production by means of irrigation. Moreover, the applicant must acquire rights to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land. (43 CFR 232.13). To make final

proof the entryman must show that he has exercised such diligence in the use of water as will, if continued, result in a perfect right. The pertinent regulation points out that a water right and water supply are not the same thing and that the two are not always or necessarily found together. A perfect right is limited by the area of the land that has been irrigated by water provided thereunder. (43 CFR 232.32(d)).

The Department has held that it is proper to refuse to classify lands as suitable for desert land entry where the character of the land is such that its development for cultivation would not be economically justifiable, George V. Franklin et al, A-26606 et al. (June 26, 1953), or where the lands are subject to disposal by public sale and available evidence indicates doubt that they are more suitable for desert land entry than for the production of native grasses and forage plants. Floyd Eakin, A-26574 (February 10, 1953). The Department has held further that applications for desert land entry are properly rejected where there is substantial evidence that the lands applied for are not suitable for sustained cultivation of crops, there is considerable doubt that reclaiming the land is feasible, and other disposition of the lands appears to be in the public interest. Helen C. Smith et al., A-26968 et al. (March 4, 1955); Cf. William John Mauro, supra.

Though Public Land Order No. 125 dated May 20, 1943 which reserved certain of the lands from entry has since been revoked by Public Land Order 948, of March 29, 1954, applications for the land when withdrawn were properly rejected. John C. Sanborn et al., A-27218 (December 12, 1955); 43 CFR 232.3. Neither are lands mineral in character subject to entry under the Desert Land Act. 43 CFR 232.3(a).

Henry Himmelfarb and Lek Von Kaesborg, attorneys, have requested a hearing to present additional evidence. Apparently it is the contention of appellants that a hearing is conducted as a matter of course in the process of classifying the land. However, an appellant is not entitled as a matter of right to a hearing to determine the proper classification of the land. Cf. Margaret A. Andrews, Charles B. Gonsales, A-27328 (February 4, 1957). Appellants have had the opportunity to put into the record any evidence which they desired. We believe that the evidence now in the record is sufficient to decide the issues. The request for hearing is therefore denied.

Certain of the appellants requested an extension of time to submit affidavits in support of their appeals. Copies of statements and other data were received in certain of the cases as indicated above and were considered in this decision. Appeals in all instances were received on or before April 6, 1955 and though the rules of the Department at the time did not provide for hearings on ordinary applications for public lands as distinguished from contest hearings, the rules did not preclude the filing of evidentiary documents in support of appeals. Leonard E. Noren et al., supra.

Field reports indicate that the lands are extremely marginal for reclamation by irrigation. The major part of the lands sought are either mineral in character, are under application for state indemnity selection or state exchange, or classified for disposal under the Small Tract Act. (See APPENDAGES A through E). The major portion of the lands involved in the applications listed on APPENDIX F are also mineral in character and included in small tract classifications and state selection and exchange applications. The Land Office records have been noted that all of the remaining land included in APPENDIX F not covered by the foregoing conflicts, along with the lands described in APPENDIX G, are under consideration for small tract classification.

Appellants' allegations of opinions and statements concerning the suitability of the land are not sufficiently persuasive evidence to controvert the findings and conclusions of the Manager which are based upon detailed investigations and analysis of the sutability of the land for desert land entry. The Department has held that where the classification of the land is adverse to the applicant, the burden is upon the applicant should he appeal the classification to show in what respect the adverse classification is in error. In the absence of error, which appears on the face of the record, appellant must show by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson et al., A-27236 et al. (February 29, 1956); Cf Gene Edwin Simpson, A-27352 (August 13, 1956); Cf Harry E. Anderson, A-27313 (June 14, 1956).

After careful review and consideration of all of the evidence presented for the record, we can find no reason for modifying or otherwise changing the Manager's decisions, nor do statements or arguments advanced by appellants convince us of any error in the classification of the land involved as unsuitable for desert land entry. Therefore, the decisions of the Manager cited herein are hereby affirmed.

It is noted that the Land Office Manager made no decision in the matter of the desert land application of Hugh Montgomery Los Angeles 0122086 (APPENDIX F) for lands described as follows:

T. 4 N., R. 3 E.
Sec. 6: SW$\frac{1}{4}$SE$\frac{1}{4}$, S$\frac{1}{2}$SW$\frac{1}{4}$
Sec. 7: NW$\frac{1}{4}$NE$\frac{1}{4}$

The land classification reports show that the soils on the land are the clay loams and heavy clay loams (Lahonton clay loams and clays) which are very impervious, poorly drained soils and of the lowest quality for agricultural purposes to be found in Johnson Valley. In view of the general circumstances of soils, water supplies, and development costs described above, the land is not considered to be agricultural land. Accordingly, desert land application Los Angeles 0122086 is hereby rejected.

The right of appeal to the Secretary of the Interior is allowed. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellants of this decision, and must be accompanied by a $5.00 filing fee for each separate desert land application on which appellant is seeking favorable action. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Earl J. Thomas
Director

Attachment

DISTRIBUTION:

Mr. Harry Himmelfarb, Attorney (Certified Mail)
Mr. Lek Von Kaesborg, Attorney (Certified Mail)
Each appellant (Certified Mail)
Mr. Hugh Montgomery (Certified Mail)
Hon. W. Kerr Scott, United States Senate
Hom. Harry R. Sheppard, House of Representatives
Executive Officer, State Lands Division, State of California
Director, Department of Natural Resources, State of California
Lands Staff Officer
Appeals List No. 1
CFG

APPENDIX A

L.A. 0102168	Mary Catherine Archer	T. 4 N., R. 2 E.,	sec. 22, $S\frac{1}{2}$
L.A. 0102956	Daniel T. Pecnik	T. 4 N., R. 2 E.,	sec. 21, $NW\frac{1}{4}$
L.A. 0102758	Leon J. Lap ides	T. 4 N., R. 2 E.,	sec. 20, $S\frac{1}{2}$
L.A. 0105743	Fred M. Sparks	T. 4 N., R. 2 E.,	sec. 25, $NW\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$.

The lands embraced in each of the above applications are classified as mineral in character.

APPENDIX B

L.A. 094933	Annie May Hayes	T. 4 N., R. 4 E., sec. 19, E½NE¼
L.A. 0104894	Kathryn D. Gates	T. 4 N., R. 4 E., sec. 20, S½
L.A. 098131	Henry Himmelfarb	T. 4 N., R. 3 E., sec. 21, W½
L.A. 098130	David Himmelfarb	T. 4 N., R. 3 E., sec. 21, E½
L.A. 098128	Marcia Gomer	T. 4 N., R. 3 E., sec. 28, W½
L.A. 0106912	Eudice J. Rockoff	T. 4 N., R. 3 E., sec. 33, N½
L.A. 0106911	Arthur L. Rockoff	T. 4 N., R. 3 E., sec. 33, S½
L.A. 095725	Hollis W. Fleenor	T. 4 N., R. 3 E., sec. 34, W½
L.A. 095726	Agnes E. Rapp	T. 4 N., R. 3 E., sec. 34, E½
L.A. 095727	Ruth K. Rapp	T. 4 N., R. 3 E., sec. 35, W½

The lands embraced in each of the above applications are under application for State Indemnity Selection by the State of California

APPENDIX C

L.A. 0102756	Genevieve L. Parker	T. 4 N., R. 4 E., sec. 8, S½
L.A. 0102757	Thomas J. Parker	T. 4 N., R. 4 E., sec. 8, N½
L.A. 0126825	Finnis E. Wiggins, Jr.	T. 4 N., R. 4 E., sec.18, N½
L.A. 0102616	Stan Flinkman	T. 4 N., R. 3 E., sec.17, N½
L.A. 0102615	Ann Flinkman	T. 4 N., R. 3 E., sec.17, S½

The land embraced in each of the above applications are under acpplication for State Exchange by the State of California

APPENDIX D

L.A.	095951	Rodney C. Hembree	T. 4 N., R. 4 E., sec. 7, NW$\frac{1}{4}$, NW$\frac{1}{4}$NE$\frac{1}{4}$, NW$\frac{1}{4}$SW$\frac{1}{4}$
L.A.	098129	Phillip Himmelfarb	T. 4 N., R. 3 E., sec. 6, N$\frac{1}{2}$S$\frac{1}{2}$, NW$\frac{1}{4}$
L.A.	096231	Pete J. Parker	T. 4 N., R. 3 E., sec.15, S$\frac{1}{2}$
L.A.	096475	Daniel Wiley Matthews	T. 4 N., R. 2 E., sec. 1, N$\frac{1}{2}$
L.A.	094645	Murray A. Chilcoat	T. 3 N., R. 4 E., sec. 8, N$\frac{1}{2}$
L.A.	094863	Hugh W. Bevins	T. 3 N., R. 4 E., sec. 8, S$\frac{1}{2}$
L.A.	094641	Ralph A. Kramer	T. 3 N., R. 4 E., sec. 9, N$\frac{1}{2}$
L.A.	094642	Inez D. Kramer	T. 3 N., R. 4 E., sec. 9, S$\frac{1}{2}$
L.A.	094710	Edmond S. Estey	T. 3 N., R. 4 E., sec.10, S$\frac{1}{2}$
L.A.	0104694	Shirlee Gomer	T. 3 N., R. 3 E., sec.11, S$\frac{1}{2}$
L.A.	0104693	Albert Gomer	T. 3 N., R. 3 E., sec.11, N$\frac{1}{2}$

The lands embraced in each of the above applications are classified for small tract purposes.

APPENDIX E

L.A.	098127	Murray Gomer	T. 4 N., R. 3 E., sec. 28, E½
L.A.	096476	Lucille W. Matthews	T. 4 N., R. 3 E., sec. 31, E½
L.A.	098132	Ruth Himmelfarb	T. 4 N., R. 2 E., sec. 1, S½
L.A.	094711	Randall E. Irvine	T. 3 N., R. 4 E., sec. 10, N½

The lands embraced in each of the above applications conflict with two or more of the classifications or filings enumerated in appendages A through D above.

APPENDIX F

L.A. 094936	Jack T. Roberts	T. 4 N., R. 4 E., sec. 19,	E½SE¼
L.A. 094809	A. Ruth Rubidoux	T. 4 N., R. 4 E., sec. 32,	W½
L.A. 094859	Donald W. Peterson	T. 4 N., R. 4 E., sec. 33,	E½
L.A. 095861	Roy L. Bowen	T. 4 N., R. 3 E., sec. 6,	E½
L.A. 0122086	Hugh Montgomery	T. 4 N., R. 3 E., sec. 6,	S½SW¼, SW¼SE¼
		T. 4 N., R. 3 E., sec. 7,	NW¼NE¼
L.A. 0106603	Joseph W. Butts	T. 4 N., R. 3 E., sec. 7,	NW¼, N½SW¼, SW¼NE¼, NW¼SE¼
L.A. 095039	Caroline L. Gates	T. 4 N., R. 3 E., sec. 22,	SW¼
L.A. 095526	Gerald F. Rapp	T. 3 N., R. 4 E., sec. 2,	W½

Applications conflict in part with conflicts enumerated in APPENDAGES A through E above. Land Office records have been noted to the effect that all of the lands are under consideration for small tract classification.

APPENDIX G

L.A. 0106599	Max L. McKnight	T. 5 N., R. 3 E., sec. 23, S½
L.A. 097175	Lily I. Garrett	T. 5 N., R. 3 E., sec. 25, S½
L.A. 095529	Charles F. Rapp	T. 3 N., R. 4 E., sec. 2, E½
L.A. 095527	Carol L. Rapp	T. 3 N., R. 4 E., sec. 11, E½

Land Office records have been noted to the effect that the lands embraced in the above applications are under consideration for small tract classification.

23464

appeal to Sec
affirmed A-275-83 9-13-60

In reply refer to:

Sacramento 045467
045542
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1957

Certified Mail
Return Receipt Requested

DECISION

Leonard E. Noren Harry C. Perry	:	Desert Land Applications

Decision of Manager Affirmed

Leonard E. Noren and Harold C. Perry have submitted to the Bureau of Land Management the results of experiments conducted in an effort to demonstrate the agricultural value of the lands on which they seek desert land entry.

Mr. Noren's original application was filed on November 26, 1951; Mr. Perry's on January 3, 1952. Both of the tracts applied for are in Township 32 South, Range 26 East, Mount Diablo Meridian, Kern County, California. Mr. Perry has applied for the southeast quarter of section 20; Mr. Noren for the south half of section 22.

These applications were rejected on January 9, 1953, by the Manager of the Sacramento, California, Land Office on the ground that a soil survey report found that the lands applied for are composed of Traver clay loam, a soil unsuitable for agricultural development because of the presence of an extremely high accumulation of salt.

The applicants appealed from this decision, and in their statements of reasons, contended that the findings were untrue and arbitrary, and that identical soils in the vicinity were being successfully farmed.

In affirming the decision of the Land Office Manager, the Acting Lands Officer of the Bureau of Land Management replied to the charge that the findings were inaccurate and arbitrary by referring at greater length to the soil survey on which the adverse classification was based:

> The lands described by the appellants are situated within an area mapped and described in 'Soils Survey, Bakersfield Area, California,' U.S.D.A. Bulletin No. 12, Series 1937, issued in 1945. This bulletin indicates that sections 20 and 22, T. 32 S., R. 26 E., M.D.M. are included in a soil belt called the 'Traver Clay Loam.' It then

proceeds with a discussion as to the formation and characteristics of this soil and concludes that areas composed of the Traver clay loam series have no agricultural value even for grazing due to its alkali content.

The applicants' second contention, that identical soils in the vicinity were being successfully farmed, was contrary to the information contained in a report of a field examination made in October, 1952. That report indicated that none of the Traver clay loam types of soil in the area had been cultivated.

The Acting Lands Officer concluded that "the development of these lands for cultivation would not be economically or practically justifiable. Therefore, the lands are not properly classifiable as suitable for desert land entry."

On appeal to the Secretary of the Interior, however, the cases were remanded. Leonard E. Noren, Harry C. Perry, A-27147 (August 1, 1955). The reasons for this action were set forth in the decision:

> I note from the records of the Department that two desert land entries have been allowed in section 24, T. 32 S., R. 26 E., M. D. M., by the Bureau of Land Management. Sacramento 040380, Peter A. Luppen, was allowed on June 15, 1951, for the N½N½ sec. 24, T. 32 S., R. 32 E., M. D. M., and Sacramento 047183, Lytton F. Ivanhoe, Jr., was allowed on May 21, 1953, for the SE¼ sec. 24. These tracts are located from 1 to 3 miles, respectively, from the two tracts involved in this appeal. I note from the records of Sacramento 040380 that Mr. Luppen's application was rejected on August 25, 1950, on the basis of a field examination dated April 6, 1950, which was based upon the Soil Survey Bulletin No. 12 of the Bakersfield area to the extent that the land applied for contains Traver clay loam soil and was therefore unsuitable for agricultural development. Subsequent to the rejection of his application Mr. Luppen submitted a soil test report from a reputable testing laboratory of the land he had applied for which indicated that reclamation of the land could be accomplished by the application of soil amendments and leaching, there being good subdrainage to facilitate this process. As a result of this evidence another examination of the land applied for by Mr. Luppen was undertaken by the same field examiner who had made the earlier examination. In a report dated February 23, 1951, the field examiner stated that in view of the specific soils data supplied by the testing laboratory, findings as to the water supply, and the results of experimental cotton planting on adjacent land in the Traver clay loam soil type, he recommended that the entry be allowed. It was his opinion that there was some variation in the Traver clay loam soil type in the area of the land applied for.

It is my opinion that if specific soil tests showed the land in section 24 to be suitable for cultivation in spite of the fact that it is in the Traver clay loam soil belt, then it is conceivable that the same could be shown in regard to the lands in sections 20 and 22. There is no record of any soil tests of the soils in sections 20 and 22 ever having been made. A general area classification must give way to a specific study of specific tracts in the area. Elmer Richard Wright et al., A-27020 et al. (February 28, 1955).

Since rejection of the appellants' application was based upon Soil Survey Bulletin No. 12 which does not purport to show that actual soil tests were made on the lands applied for, and in face of the possible agricultural success achieved on lands in section 24, it is my opinion that the appellants should be allowed to present evidence to contradict the conclusions reached in the soil survey bulletin.

Therefore, the cases are remanded to the Bureau of Land Management with instructions to allow the appellants a reasonable time in which to submit whatever evidence they desire to submit to disprove the classification of the lands applied for as unsuitable for agricultural development and to reconsider the classification of the lands in the light of such evidence and such other pertinent evidence as may be developed.

The appellants have submitted their additional evidence.

It consists of two affidavits by Orval Fillmore, who states that over a period of more than 25 years by means of actual personal experience and observation of and familiarity with the actual experience of others in the planting, growing and culture of alfalfa he has acquired a knowledge of the possibilities of alfalfa and of the methods necessary to facilitate its growth and production under varying conditions, including those characteristic of alkali soils. Such soils, he avers, properly handled, can be made to produce excellent crops of alfalfa after the alkali salts have been neutralized. Two experiments are then described. In April, 1955, the affiant took from the land on which the applicants seek to make desert land entry a quantity of soil, containing the highest concentration of salts to be found, and transported that soil to some other place, apparently in Ventura County, where it was placed in a bed separated from the local soil. Alfalfa was then planted in that bed, and water applied. Colored pictures were submitted to illustrate the growth and color of the alfalfa. Those portions of the picture showing the alfalfa are out of focus, and although the overall hue of the plants is green, a pronounced discoloration is observable.

Other pictures, in black and white, were submitted, purporting to show the growth of cotton on land immediately adjacent to the land here involved. Also, pictures supposedly showing the growth of brush and weeds on the lands applied for were submitted, and the

affiant asserted that "it is a well-known agricultural fact that where brush and weeds grow well, all other forms of agriculture succeed."

A second affidavit was later submitted by the same person. It describes a similar experiment, conducted on soils removed from the land applied for on or about November 1, 1955. Soil to a depth of about one foot was placed over the land where the experiment was conducted. There was no separation between the soil brought in and the local soil, in order "to permit the alfalfa roots to go down." No additives or fertilizer of any kind were applied; the necessary corrections were obtained by the use of water alone. Colored pictures of the crop thus obtained were submitted, and seem to indicate a growth with a deep bluish green color.

In submitting these affidavits, the attorney for the appellants noted that they were not "submitting theoretical soil tests as they hold the view that the actual testing of the soils for agricultural purposes affords a much more reliable and accurate gauge of their true potentialities. The actual tests made of the most unlikely of soils from the lands applied for show beyond question that, properly handled, they are susceptible of very satisfactory agricultural uses."

Before these experiments can be evaluated, the nature and significance of the findings upon which the classification of these lands as unsuitable for desert land entry is based must be carefully studied.

The manager rejected the applications because the soil had an "extremely high accumulation of salt"; this rejection was affirmed by the Acting Lands Officer of the Bureau of Land Management who, quoting from the United States Department of Agriculture Soil Survey Report for the Bakersfield, California, area, stated that this land, composed of the Traver clay loam series of soil, has no agricultural value due to its alkali content, and that its development would not be economically or practically justifiable.

The terms "salt" and "alkali" are explained thusly:

> In irrigation work, the term alkali soil was formerly used to designate any soil that contained excessive proportions of soluble salts. Soils that contained excessive quantities of caustic salts such as sodium carbonate, which dissolve organic matter and cause the formation of a dark-colored crust at the soil surface, were called black alkali. Soils that contained excessive quantities of neutral salts, which cause the formation of a white crust at the soil surface, were called white alkali.
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> During recent years, some authorities have been using the terms alkali soils and saline soils instead of black alkali and white alkali. An alkali soil is defined as one that contains alkali salts, usually sodium carbonate, and has a pH value

of 8.5 or higher. A saline soil is defined as one that contains an excess amount of soluble salts, more than about 0.2 per cent, is not excessively alkaline, and has a pH value less than 8.5. 1/

The soil survey report which was relied upon in the classification of these tracts describes the Traver clay loam belt:

> This soil has a light-brown surface soil, which is open and friable throughout, being made up of very fine granular material washed from the higher parts of the fans. The soil is very high in lime, and close examination reveals many small flakes of mica.
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> This soil occurs mainly in one large body extending from the south shore of Buena Vista Lake bed eastward to Kern Island. This body represents the extreme outer fringe of the fans from Santiago, San Emigdio, and smaller creeks, which originate in the mountains to the south. In addition to receiving any salts that may have been washed down from the higher levels, the soil has been greatly influenced by the high water table and the saline waters from the lakes and slough-ways along its northern border. As a result accumulations of salts are extremely high and have formed a thick surface efflorescence of salts. Because of this condition the area can be literally described as one huge puff spot, in which a person will sink several inches when walking across it in either the dry or the wet season. At a depth ranging from 6 to 12 inches a crystalline salty layer 1 or 2 inches thick is present in many places. This layer is soft in some places, but in many places it is firm enough to be removed and roughly handled. Except for a fine green moss, which grows in the spring and later turns brown, the soil supports

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1/ Ivan E. Houk, Irrigation Engineering, vol. 1, p. 477 (1951)
The symbol pH is explained on page 27 of the same book:

> Soil reactions, in other words degrees of acidity or alkalinity, are commonly discussed on the basis of pH values. The pH value is the logarithm of the reciprocal of the hydrogen ion concentration. Inasmuch as the concentration of hydrogen ions in pure water is 1 in 10 million, the logarithm of the reciprocal is 7. Soils with pH values of 7 are said to be neutral. Values less than 7 indicate acidity, and values greater than 7 indicate alkalinity. Since the scale is logarithmic, a soil with a pH value of 5 is 10 times as acid as a soil with a pH of 6. Similarly, a soil with a pH value of 9 is 10 times as alkaline as a soil with a pH value of 8.

only a very scattered growth of inkweed, together with a narrow strip of iodine bush near the northern border, where the surface soil is somewhat darker. These areas have no agricultural value, even for grazing. 2/

In the map accompanying this report, the area delineated as being strongly affected by salts and alkali includes the whole of both tracts here involved.

However, in view of the holding that this general area classification must give way to a specific study of the particular tracts applied for, tests of the soils on these lands were made by the field examiner.

Such tests could have been made at the time of the first examination of the land, and at any time while the land remained in the public domain; it was not, therefore, improper for these tests to have been made at a later date. Indeed, the decision which remanded the cases authorized the development of pertinent evidence.

The examiner took specimens of soil from the center of every 40 acre portion of the land. These specimens represent the soil to a depth of two feet. An analysis of these soils by a reputable testing laboratory indicates that the average salt content of the land for which Mr. Noren has applied is approximately 20813 parts per million, or 2.1%; the average salt content of the land for which Mr. Perry has applied is 14264 parts per million, or 1.4%. The average pH values of these lands are 8.03 and 7.9, respectively. The predominating salts are sulphates.

One acre foot of soil weighs about 4 million pounds. A 2.1% salt content would mean the presence of about 42 tons of soluble salts in each acre foot of soil; a 1.4% salt content indicates about 28 tons of soluble salts in each acre foot of soil. More than 1.5% salt content is rated by Kearney and Scofield as excessive; 1.0% to 1.5% is rated by them as very strong. 3/ Some authorities consider a salt content of 0.2% as excessive. 4/

Moreover, laboratory studies have shown that plant growth is reduced by lower concentrations of salt than are sometimes regarded as detrimental:

> These studies have also shown that osmotic pressure of the soil solution is the best measure of the inhibiting

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2/ United States Department of Agriculture, Series 1937, No. 12 Soil Survey, Bakersfield Area, California, p. 74 (1945)

3/ Houk, op. cit., p 479

4/ U.S. Regional Salinity Laboratory, Riverside, California, Diagnosis and Improvement of Saline and Alkaline Soils p 1 (1947)

influence of salinity upon plant growth. There are indications that this effect of osmotic pressure in reducing water uptake is directly additive to that of soil moisture tension. Several different experiments have indicated that most crop plants stop growing when the equivalent soil moisture stress, that is, the sum of the soil moisture tension and the osmotic pressure of the soil solution, reaches 10 to 15 atmospheres. For example, suppose a farmer is growing alfalfa on a loam having a salt content of 0.2 percent sodium chloride and a wilting percentage of 6.0 percent when the latter is determined on a nonsaline sample. Experiments have shown that under such conditions the alfalfa will stop growing when the soil dries out to a moisture content of 13 percent. In other words, the alfalfa cannot use a large portion of the soil moisture which is normally available in a nonsaline soil if the soil contains 0.2 percent salt. The presence of even 0.1 percent salt in this soil would develop an osmotic pressure in the soil solution that is definitely inhibitive to the growth of alfalfa. 5/

The salt content of the soils in question is from 7 to 10 times greater than the amounts postulated in the example quoted above.

A picture taken by the field examiner of Mr. Noren's tract clearly reveals the surface accumulations of salt referred to in the soil survey report. A picture of Mr. Perry's tract discloses its barren nature.

The appellants have submitted pictures purporting to show a good growth of brush and weeds on the land. An examination of the

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5/ U. S. Regional Salinity Laboratory, op. cit., p 13. It should be noted that this view that plants on saline substrates are injured because of the high osmotic concentrations of the substrate, and consequent limitation on the rate of water uptake, has been questioned. "No doubt osmotic effects are potent and important, but besides these, important histological modifications and physiological derangements within the plant also come into play . . . . Perhaps the chief limitation to a clear understanding of the physiological effects of high concentration of salts lies in the fact that the normal functions of the essential elements are none too well understood. It is possible that the high concentrations of salts found in many alkali soils cause modification in the normal roles of one or more of the necessary elements. At the same time specific reactions may be induced by the absorption of unusual percentages of substances from the soil. Bower and Wadleigh's (1948) data shows that the absorption of necessary elements is profoundly modified by only moderate concentrations of salts." W. P. Kelley, Alkali Soils, p 129 (1951).

area by a field examiner indicates that the actual growth illustrated is probably not on either of the applicants' tracts, but west of the west line of section 22. Be that as it may, the presence of such a growth is not indicative of the nonsaline nature of the soil, nor of its suitability for agricultural purposes. Some plants can tolerate large quantities of alkali, or salt. Indeed, the presence of such plants upon the land is often indicative of a saline soil. The field examiner believes that the growth pictured is of the genus Atriplex. This is one of six genera of the Chenopodiaceae family often used as indicators of saline soils. 6/ In the Bakersfield Area soil survey iodine bush is reported growing near the northern area of the Traver clay loam belt: soils bearing such plants are usually very saline. 7/

The field examiner reports that no land adjoining the tracts applied for is under any cultivation whatsoever; it is his opinion that the cotton in the photograph submitted by the appellants is on land approximately one-half mile to the south of their proposed entries. The soil on that land is of a different type, being San Emidgo Sandy Loam.

The discussion, concerning the presence of salt, or alkali, upon the lands applied for and its effects on plant growth, has proceeded thus far without reference to the experiments conducted by the appellants because those experiments do not attempt to controvert the finding that the lands are of a saline character; they have been directed to proving that the land, admittedly saline, can be made productive by the utilization of proper agricultural methods. When this case was previously considered, there was no indication that the specific tracts of land involved had the same saline characteristics which the soil survey report indicated obtained in this area. The field examiner's uncontradicted report has established that what is true of the area in general is true of the specific lands applied for. The excessive salinity of the lands on which desert land entry is sought is a reason for the rejection of an application. William F. Turner, A-23193 (December 12, 1941); Arthur Eugene Woodard et al, A-25830 (May 2, 1950); Naomi H. Ratcliff, A-26184 (June 1, 1951); Helen C. Smith et al, A-26968 (March 4, 1955); Doris E. Wickman et al, A-27324 (July 13, 1956).

The appellants, nevertheless, have been given the opportunity to show that their lands, although saline, can be successfully reclaimed. When adequate subsoil drainage is available and ample supplies of water can be secured for leaching purposes, serious salt problems can usually be overcome. When adequate subsoil drainage is not available, an efficient system of drainage works must be installed if the land is

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6/ U.S. Regional Salinity Laboratory, op. cit., p 131

7/ ibid., p 11

to be reclaimed. 8/ The accumulations of white alkali covering this area are indicative of a high water table which prevents the land from being adequately drained in its natural state. 9/ Unless an adequate system of drainage is maintained on land such as this, no reclamation will be permanently successful. 10/

The experiments conducted by the applicants entirely ignore the problem of drainage. The removal of a small portion of soil from one location to another, and the growing of alfalfa on that soil, does not offer evidence with which to contradict a finding that the land is inadequately drained and cannot be successfully leached. The land on which the experiments were conducted could have been well drained land. The mere act of removing soil from the ground and placing it elsewhere within a board enclosure might affect the drainage characteristics of the soil.

Even as a test only of the quality of the soils, the experiments are defective. In the first experiment, where soils from the land on which desert land entry is sought were kept separate from the underlying local soil, the plants exhibit a discoloration, or chlorosis, which could be indicative of the low fertility of the soil. 11/ The results of the second experiment are revealed in photographs showing plants with a deep blue-green coloration. There appears to be a marked irregularity in the vigor of their growth. These are recognized symptoms of a saline soil. The bluish appearance, which can be very pronounced in alfalfa, is due to an unusually heavy waxy coating on the surface of the leaves. 12/

Also, the failure to separate the local soil from the experimental soil could not but affect the results. Alfalfa is a deep rooted plant: although the soils about the base of these plants may have a high salt content, the plant may be absorbing most of its water from the nonsaline soil beneath the experimental sample. 13/ Since the alfalfa growth is blue-green, this "test" of the soils in Kern County may be nothing more than proof of the salinity of the soils in Ventura County. In any event, because of the lack of controls which characterize scientific experimentation, the evidence offered here is probative of nothing. That almost all alkali soils can be made productive when the salts are removed does not need proving; no attempt was made to show that the salts could be economically removed from the soil *in situ*, and that is the issue.

8/ Houk, *op. cit.*, p 477
9/ U.S. Regional Salinity Laboratory, *op. cit.*, p 64
10/ Kelley, *op. cit.*, p 158
11/ U.S. Regional Salinity Laboratory, *op. cit.*, p 13
12/ *ibid.*, p 13
13/ *ibid.*, p 14

In addition to the physical aspects of the drainage problem, certain chemical problems exist. The analysis of the soils on the tracts applied for by Mr. Noren and Mr. Perry showed average pH values of 8.03 and 7.9, respectively. This indication of alkalinity, in connection with tests showing a high salt content, givesrise to the conclusion that these soils are of the type described by the Department of Agriculture as saline-alkali soils, formed as a result of the combined processes of salinization and alkalinization. 14/ As long as excess salts are present, the appearance and properties of these soils are generally similar to those of saline soils, and up to this point they have been discussed merely as saline soils. Under conditions of excess salt the pH value is seldom higher than 8.5, and the colloids remain flocculated. If the excess soluble salts are temporarily leached downward the properties of these soils may change markedly, and become similar to those of nonsaline-alkali soils (i.e., black alkali soils, as they are sometimes designated.) As the concentration of the salts in the soil solution is lowered, some of the exchangeable sodium hydrolyzes and forms sodium hydroxide. This may change to sodium carbonate upon reaction with carbon dioxide. In any event, the soil usually becomes strongly alkaline (pH above 8.5), the colloids disperse, and the soil develops a structure unfavorable for the entry of water and tillage. 15/

These conditions were found by the field examiner to prevail on the lands in question: the soil on the proposed entries, when moistened, resembles modeling clay, both in plasticity and smoothness, as well as in impermeability.

Gypsum (calcium sulphate), when applied to this soil, will combine with the sodium (sodium carbonate) and produce calcium carbonate and sodium sulphate which, being water soluble, can be leached out - providing the adequate drainage exists.

14/ ibid., p 6

15/ Cf Kelley, op. cit., p 79: "[T]he Regional Salinity Laboratory at Riverside, California, sharply contrasted saline and alkali soils. In certain cases the hyphenated term saline-alkali has been applied. Obviously a saline soil is one containing salts, and the term "saline soil" is used in reference to soluble salts. With this usage logical exception cannot be taken. What appears to the writer as inconsistent and arbitrary is the restriction of the term alkali to those soils which contain abnormal proportions of exchangeable sodium. To limit the term to this condition is equivalent to saying that sodium is an alkali only when exchangeable, and this is manifestly untenable . . . . a saline soil is as much and even more an alkali soil than it will be after the salts have been leached out. Further, sodium salts make up a high percentage of the total soluble salts of practically all saline soils, whether or not they contain abnormal percentages of exchangeable sodium or have a high pH.

"It follows then that practically all saline soils of arid regions are alkali soils." (Emphasis in last paragraph supplied.)

The field examiner has estimated that the cost of installing an adequate network of underground concrete drainage tile on the land for which Mr. Noren has applied would be in excess of $100,000; the cost on Mr. Perry's proposed entry would be over $60,000. The cost of purchasing and transporting the gypsum to these lands would be more than $5.00 per ton; if it were assumed that each acre of land would require twenty tons of gypsum for its treatment, the cost for treating Mr. Noren's land would be $32,000; the cost for Mr. Perry's would be $16,000. The cost of drilling a well further increases the expenditures which would have to be made on these lands. It is clear that no reclamation is possible at a cost which would justify the outlay. Where land cannot be profitably reclaimed under normal economic conditions, an application for entry on that land must be rejected. Jeremy and Co. v Thompson et al., 20 I.D. 299 (1895); Emma Maedena Roybal, A-25285 (August 17, 1948).

A compelling reason for the remanding of these cases was the fact that a desert land entry had been allowed in section 24 of the same township in which the instant lands are located - a distance of not more than three miles from the tracts applied for here. The application of the entryman in section 24, Mr. Luppen, had originally been rejected, for the same reasons that the present appellants' applications had been rejected. Mr. Luppen submitted a soil test report tending to show the possibility of the reclamation of the land. On the basis of that evidence, the entry was allowed, and on the basis of the allowance of that entry, Messers. Noren and Perry were given an opportunity to submit soil test reports of their own. If variations in the soil could exist so as to warrant the allowance of an entry in section 24, the same might be true of sections 20 and 22.

The field examiner inspected the Luppen entry, and found that his efforts at reclamation were unsuccessful. Mr. Luppen submitted final proof, but it was not satisfactory, and the field examiner has recommended that adverse proceedings be taken against his entry. Mr. Luppen's unsuccessful attempt was made on soil demonstrably better than that applied for by the applicants in this case: it has a total salt content of 10107 parts per million, or 1.0 percent, as compared with 1.4% and 2.1% in the instant cases. In addition, Mr. Luppen was an instructor of agriculture in the Kern County School System, and presumably familiar with every possible method of reclamation which could be used. His failure to succeed is a practical demonstration of the unsuitability of the land in this area for agricultural development.

The salinity of the soils, the high level of the water table, and the lack of a practical and economical means of draining the land, make the proposed entries unsuitable for the sustained production of agricultural crops. Helen C. Smith et al., A-26968 (March 4, 1955).

The rejection of the appellants' applications for desert land entry is therefore affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee for each application included in an appeal. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

Edson Abel, Attorney (Certified Mail)
Leonard E. Noren (Regular Mail)
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Lands Staff Officer (1)
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23464

In reply refer to:

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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 25, 1957

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DECISION

Norma Tyler Richardson	:	Desert Land Application
State of California	:	State Indemnity Selections
	:	Protest

Decision of Manager Affirmed, as Modified
Protest Dismissed

Norma Tyler Richardson has appealed to the Director, Bureau of Land Management, from the decision of the Manager of the Land Office, Los Angeles, California, dated July 15, 1954, wherein her desert land application was rejected in part. The application was filed pursuant to the Act of March 3, 1877, as amended (43 U.S.C., 1952 ed., sec. 321 et seq.), for 320 acres described as the S$\frac{1}{2}$ sec. 11, T. 6 S., R. 22 E., S.B.M., California. It was rejected as to the SE$\frac{1}{4}$, NE$\frac{1}{4}$SW$\frac{1}{4}$ because McCoy Wash drains through the section which render a large portion of the land unfit for agricultural use, and because the irrigation plan submitted by the Palo Verde Irrigation District showed that only the W$\frac{1}{2}$SW$\frac{1}{4}$, SE$\frac{1}{4}$SW$\frac{1}{4}$ sec. 11, were located within Improvement District No. 1 and proposed for irrigation by the Irrigation District.

In substance, appellant argues that: (1) McCoy Wash does not drain through the land, that the land is protected from McCoy Wash by a promontory of the Palo Verde Mesa; therefore, no portion of the land is rendered unfit for agricultural purposes, that all of the land is excellent for agriculture and can and will be irrigated (2) the SE$\frac{1}{4}$, NE$\frac{1}{4}$SW$\frac{1}{4}$ were not included in Improvement District No. 1 because the land is located on the valley floor below the Mesa and can be irrigated from existing facilities of the irrigation district or from irrigation wells (3) the south 220 feet of the SE$\frac{1}{4}$ sec. 11 is now included within the proposed improvement district but for the purpose of making the W$\frac{1}{2}$SW$\frac{1}{4}$, SE$\frac{1}{4}$SW$\frac{1}{4}$ sec. 11 contiguous to other lands located within the boundaries of the district, and (4) adjoining land to the east of the rejected portion is within the Palo Verde Irrigation District and is under cultivation, and that deeded lands immediately to the south will be farmed in conjunction with the subject land.

Reports of field examination and maps of Palo Verde Irrigation District show that the W½SW¼, and parts of the SE¼SW¼, S½SE¼ sec. 11 are located within the exterior boundaries of "Improvement District No. 1," a proposed but undeveloped addition to the Palo Verde Irrigation District. 1/ District boundaries generally coincide with areas having soils that are Grade 3, or better. 2/ The report of field examination states that 15 acres in the NE¼SE¼ sec. 11 are included in the Grade 3 soil classification. The Weir-Storie soils report shows that all of the W½SW¼, and about 10 acres in the SE¼SW¼ sec. 11 also lie within the Grade 3 soil area. These grade 3 soils are located on the Palo Verde Mesa. The remaining portions of the S½ of sec. 11 lie within a wash. This wash cuts through the Mesa top forming an escarpment along either side and is 50 to 100 feet in depth where it passes through the S½ sec. 11. The soil classification report 3/ shows the land within the wash to be Grade 5 soil and unsuitable for agricultural purposes. This classification (the Weir-Storie soils report) is based upon a detailed analysis of a combination of factors such as soil depth, texture, structure, water holding capacity, and other pertinent factors affecting soil productivity and land capability.

The approved report of field examination of June 24, 1955, states there are a number of irrigation wells in the area and that underground water supplies for irrigation are available.

It also appears from the record that the portions in the S½ sec. 11 susceptible of irrigation development are confined to the W½SW¼, SE¼SW¼, and the NE¼SE¼. These subdivisions comprise two non-contiguous tracts of irrigable lands subject to entry under the Desert Land Act.

The record shows further that the State of California has filed State Indemnity Selections Los Angeles 0106078 and Los Angeles 0115910 which cover all of the SE¼ sec. 11. Los Angeles 0106078 for the NE¼SE¼ and N½SE¼SE¼ of sec. 11, was filed with the Manager on July 9, 1953, and Los Angeles 0115910 for the W½SE¼ and S½SE¼SE¼ of sec. 11, was filed May 21, 1954.

1/ The application of the Palo Verde Irrigation District L.A. 0106688 was filed pursuant to the Act of August 11, 1916 (43 U.S.C. 621, et seq.), and was approved by decision of the Regional Administrator dated December 18, 1953.

2/ Walter W. Weir and R. Earl Storie, "Soils of Palo Verde Mesa," University of California, Agricultural Experiment Station, Berkley 4, Calif., 1946. (Soil grade designations range from grade 2 to grade 6. Grades 2, 3, are considered suitable for reclamation. Grades 4, 5 and 6 are considered unsuitable.

3/ See footnote 2.

All the vacant, unreserved and unappropriated public land in California was withdrawn from settlement, location, sale or entry and reserved for classification by Executive Order 6910 of November 26, 1934. Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed., 315f) authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910 which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided under the act. Cf. William John Mauro, A-27318 (July 13, 1956); Cf. Ernest C. DeFord, et al., A-26591, etc. (February 6, 1953); 43 CFR 291.1. In the exercise of this discretion the Secretary (or his delegate) decides whether a particular disposal would or would not be in the public interest. While every consideration is given to the interest and needs of the applicant in the particular case, the decision must properly consider the general or over-all effect that the disposal will have. It is the policy of the Bureau to encourage the development of land suitable for agricultural purposes; however, such development should not be to the exclusion of established land uses or other higher uses. Pertinent instructions of the Department for consideration in the classification of lands that may be desert in character are:

(1) To adhere to State and local attitudes and practices concerning land classification and use insofar as practicable.

(2) To protect the land resource from attempts of desert-land development in areas clearly unsuited for such use.

The Department has held that it is proper to refuse to classify lands as suitable for desert land entry where available evidence reflects doubt that the land is more suitable for desert land entry than for the production of native grasses and forage plants. Floyd Eakin, A-26574 (February 10, 1953). The Department has also refused to classify land as suitable for desert entry where there is substantial evidence that the land applied for is not suitable for the sustained cultivation of crops, where there is doubt that reclaiming the land is feasible, and other disposition of the land appears to be in the public interest. Helen C. Smith, et al., A-26968, et al. (March 4, 1955); Cf. William John Mauro, A-27318 (July 13, 1956).

Allegations on appeal that McCoy Wash does not drain through the land as indicated by the Manager's decision are correct, though not pertinent, since the decision in the matter turns upon the suitability of the land for agricultural purposes. The detailed soils report shows the lands within the wash which dissects sec. 11 are Grade 5, among a range of soil grades from 2 to 6, wherein Grades 2 and 3 are the only classes considered suitable for irrigation development. The argument that the SE$\frac{1}{4}$, NE$\frac{1}{4}$SW$\frac{1}{4}$ of

sec. 11 were not included in Improvement District No. 1 because the land can be irrigated from existing facilities, is not persuasive, since these lands were never taken into the District, and apparently will not be incorporated therein because the soil analysis prepared by the Agricultural Experiment Station 4/ for use in connection with irrigation developments in the area designates soils on the NE¼SW¼, W½SE¼, SE¼SE¼, as unsuitable for cultivation. The fact that the south 220 feet of the SE¼ sec. 11 is included within the proposed improvement district only for the purpose of maintaining contiguity of lands within the District is consistent with other information in the record heretofore considered. The fact that adjoining lands to the east are now farmed or that deeded lands immediately to the south will be farmed, is not indicative of any suitability of the lands for crop production involved in this appeal.

Though the record shows that approximately 15 acres of the NE¼SE¼ sec. 1 are Grade 3 soils (irrigable land), this subdivision is not contiguous to the W½SW¼ and SE¼SW¼ sec. 11 which contain approximately 90 acres of irrigable lands. The pertinent regulation specifically provides that lands to be entered should be in compact form, and that under no circumstances can one entry be made for two or more separate, incontiguous tracts. 43 CFR 1954 ed., 232.7. It therefore follows that the appellant must choose to enter either the W½SW¼ and SE¼SW¼ of sec. 11, or the NE¼SE¼ sec. 11.

Regarding the conflict between appellant's desert land application and State Indemnity Selection Los Angeles 0106078 as to the NE¼SE¼ sec. 11, appellant's application was filed long prior to the State's application. It therefore appears from the record that desert land application Los Angeles 085858 could be properly allowed as to the NE¼SE¼ sec. 11, (Nelson A. Gertulla, A-27325 (June 20, 1957), provided the applicant, Norma T. Richardson, relinquishes her application as to the W½SW¼, SE¼SW¼ sec. 11.

Appellant has also filed a protest objecting to the allowance of State Indemnity Selection Los Angeles 0115910 as to the W½SE¼ and S½SE¼SE¼ of sec. 11, wherein she contends that (1) allowance of the State Selection would not be fair since she has proceeded exactly as instructed to do, (2) that she owns 160 acres adjoining the lands sought by her and that the allowance of the indemnity selection would separate her deeded land in the middle, (3) that she has spent $3,500.00 clearing and leveling her deeded lands, (4) the Palo Verde Water District has agreed to run a canal to where she can pump out of their ditch and that the owner of a well on the hill has agreed to sell water for 40 acres of the land, (5) that the

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4/ See footnote 2.

pumpsite location for the entire project should be about half way and in the upper corner, and (6) that she can raise tomatoes and other vegetables on the land year around.

A State may select unappropriated public lands in satisfaction of outstanding lieu rights under the Act of February 28, 1891, as amended (43 U.S.C. 851, 852). It is within the discretion of the Secretary of the Interior to determine whether a State Selection is in the public interest. State of California, A-25744 (January 18, 1950); State of California, A-25855 (August 14, 1950). The unsupported allegations of appellant protesting disposal of the W½SE¼, S½SE¼SE¼ sec. 11 pursuant to State Indemnity Selection Los Angeles 0115910 contain no new evidence for the record not already considered in connection with her appeal. Though control of the land might be convenient to her, arguments advanced do not demonstrate in any way that the State Indemnity Selection, if allowed, would be contrary to the public interest.

After careful review and consideration of all of the evidence presented for the record it appears that the W½SW¼, SE¼SW¼, and the NE¼SE¼ sec. 11 comprising two separate, incontiguous tracts, are susceptible of irrigation, and that the Manager erred in not permitting applicant to select one or the other of the two irrigable tracts rather than reject the application as to the SE¼, NE¼SW¼ sec. 11. In view of the foregoing, appellant is hereby allowed 30 days from receipt of this decision to amend her application to describe either the NE¼SE¼ sec. 11, or the W½SW¼ and SE¼SW¼ sec. 11.

Accordingly, the Manager's decision is affirmed as modified, and the protest is hereby dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a filing fee of $5.00. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962 effective October 4, 1956. See Information Sheet attached.

In the event an appeal is filed by Norma T. Richardson, the adverse party to be served with notice thereof is the State Lands Commissioner, Division of State Lands, State of California, Sacramento, California. If an appeal is filed by the State of California, the adverse party to be served is Norma T. Richardson, 755 South Fraser Avenue, Los Angeles 22, California.

Earl J. Colonna

Acting Director

Attachment
(See page 6 for distribution)-

DISTRIBUTION:

Miss Norma T. Richardson (Certified Mail)
State Lands Commission, Division of State Lands, Sacramento, Calif.(Regular Mail)
Hon. James B. Utt, Member of Congress
Lands Staff Officer
Appeals List No. 1
CFG

26514

In reply refer to:

Los Angeles 0104386
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 11, 1957

Certified Mail
Return Receipt Requested

DECISION

Harold N. Brodersen : Desert Land Application

Manager's Decision Affirmed

Harold N. Brodersen has appealed to this office from the decision of the Manager of the Land Office, Los Angeles, California, dated January 30, 1956, which rejected in part his desert land application, Los Angeles 0104386, as to 40 acres of the 200 acres he sought to enter.

Dr. Brodersen's application included the SE¼SW¼ sec. 3 and NW¼ sec. 10, T. 10 N., R. 3 W., S. B. M., California. A field examination report classified the NW¼ sec. 10, as suitable for desert entry. However, the SE¼SW¼ sec. 3 was classified as not suitable for desert entry because it is topographically unfit for cultivation.

By letter of February 20, 1956, Dr. Brodersen states, "I am checking the area with adequate qualified assistance as soon as possible with the knowledge that the NW¼, sec. 10, T. 10 N., R. 3 W., S.B.M., has not been disqualified. Will you kindly consider this letter as a request for continuance and appeal on SW¼ and SE¼ 1/ until such time as I can contact and discuss this with you and other recommended proper channels of authority in the Department of the Interior." The appellant did not submit thereafter any evidence concerning the classification of the land.

All of the vacant, unsurveyed and unappropriated public land in California was withdrawn from settlement, location, sale or entry and reserved for classification by Executive Order No. 6910 of November 26, 1934. Section 7 of the Taylor Grazing Act of June 28, 1934, as amended,

1/ Apparently through typographical error, the appellant's letter refers to the land as the SW¼ and SE¼; it should be described as the SE¼SW¼.

43 U.S.C., 1952 ed., sec. 315f, authorize the Secretary of the Interior to examine and classify any lands withdrawn by Executive Order No. 6910, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for grazing purposes and to open such lands to entry in accordance with such classification under applicable public land laws.

In determining whether to classify land for desert land entry the Secretary of the Interior, or his delegated representative, must consider the facts disclosed by the reports and recommendations of the trained field personnel of the Bureau of Land Management. The Department has held that where the classification is adverse to the applicant, the burden is on the applicant, should he appeal the classification, to show in what respect the adverse classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for agricultural use and that the adverse classification is erroneous. Mary Refugio Jackson, et al., A-27236, A-27237 (February 29, 1956).

An approved report of field examination dated July 28, 1955, states that the SE$\frac{1}{4}$SW$\frac{1}{4}$ Sec. 3, T. 10 N., R. 3 W., S.B.M., is topographically unfit for cultivation. U. S. Geological Survey topographical map "Barstow Quadrangle" shows the tract is traversed by a draw or wash tributary to the Mojave River and that part of the land is hilly and rough. Moreover, this office affirmed the rejection of a prior application, Los Angeles 0104495, covering the same 40-acre tract of land. James J. Mealey, et al., Los Angeles 094365, etc. (October 31, 1955).

The Department has held that a desert land application for land unsuitable in topography for agricultural production is properly rejected. Mary Refugio Jackson, et al., supra; Cf. Ruby D. Moore, et al., 64 I. D. 137 (1957).

Since the appellant has not submitted any evidence to establish that the classification of the land is erroneous, the decision of the Manager is affirmed.

Harold N. Brodersen is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received

there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Dr. Harold N. Brodersen (Certified Mail)
Hon. Donald L. Jackson, Member of Congress
Lands Staff Officer
Appeals List No. 1
ALR

27786

In reply refer to:
Los Angeles 0102834 etc..
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Annie E. Mayer, et al.	:	Desert Land Applications

Appeals Dismissed

Annie E. Mayer and others listed on the attached Appendix "A" have appealed to the Director of the Bureau of Land Management, from decisions of the Manager of the Land Office at Los Angeles, California, which rejected their application for desert land entry.

The Manager stated that his decisions were subject to the right of appeal to the Director of the Bureau of Land Management and that in the event an appeal was filed, full compliance was required with the provisions of 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. An information sheet containing pertinent provisions of the rules was attached to the decisions mailed to the appellants.

Section 221.1 provides for an appeal to the Director by any party adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or persons signing for the Director. Section 221.2 provides in part that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes with the statement: "The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice reads in part as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98. ...."

Section 221.98 provides in part that appeals to the Director will be subject to summary dismissal---

"(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;. . ."

Separate notices of appeal were filed on May 13, 1957, by all of the appellants except Lilly D. Friis-Hansen, whose notice of appeal was filed on May 8, 1957. The notices of appeal did not contain statements of reasons for the appeals. Consequently, a statement of reasons should have been filed in the office of the Director not later than June 7, 1957 in the case of Lilly Friis-Hansen and not later than June 12 by the other appellants. The statements of reasons for all the appellants were filed in the Land Office on June 12, 1957, and were not received in the office of the Director until June 17, 1957.

Within the meaning of section 221.3 of the rules of practice a document required to be filed in the office of the Director is not considered filed until such time as it is actually received in the Director's office. In Wilbert Phillips and Fletcher G. Edwards, A-27470 (September 23, 1957), the Department held that a document required to be filed in the office of the Director but actually sent to a land office, is not deemed to be filed with the office of the Director until such time as the document is actually received in the Director's office. Since the statements of reasons for the appeals were not filed in the office of the Director within the time required, the appeals are dismissed.

Each appellant is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee in each case. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to

the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict complaince must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director

John B. Piccolo

Attachments

DISTRIBUTION:

Mr. Clinton F. Seccombe (Regular Mail)
Each Appellant (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

APPENDIX "A"

Los Angeles	0102834	Annie E. Mayer
	0102835	Mary Friis-Hansen Larsen
	0102836	Harry J. Larsen
	0102845	Martin P. Friis-Hansen
	0102846	Lilly D. Friis-Hansen
	0102847	Grace A. Friis-Hansen
	0102848	Andrew V. Friis-Hansen
	0102849	Soren P. Friis-Hansen

29073

In reply refer to:

Los Angeles 0126844
0126845
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 17, 1958

Certified Mail
Return Receipt Requested

DECISION

Victoria M. Barnes Herbert E. Barnes	) :) :	Desert Land Applications

Decisions of the Manager Affirmed

Victoria M. and Herbert E. Barnes have appealed from decisions of the Manager of the Land Office, Los Angeles, California, dated August 22, 1956, which rejected their desert land applications 1/ Los Angeles 0126844 and 0126845. The applications were filed pursuant to the Act of March 3, 1877, as amended (43 U.S.C., 1952 ed., 321, et seq.) The Manager's action was predicated upon a classification of the lands as unfit for irrigation development because of the poor quality of the soils, topographical features of parts of the lands involved, and the toxic nature of the ground water supplies from which the lands would be irrigated.

Appellants allege in pertinent part that:

1) The subject lands connect with other lands they have bought which will give them a larger operating unit and that well laid plans will be disrupted if the applications are not allowed.

2) They plan to raise cattle and hogs in another location and bring them to the desert to feed in winter.

3) They propose to drill shallow wells and use a sprinkler system to irrigate the land.

1/ The applications are procedurally defective and subject to rejection because of noncompliance with 43 CFR 232.13 and 232.14.

4) They believe that by scraping off the desert pavements with a scraper the soil under the rocks will grow forage crops for pasture with a minimum of water and that they propose to buy some feed.

5) The lands are well located to roads.

6) The lands are only 6 miles from the Wiley well which is a shallow well that produces good water.

The record shows that the lands were examined in April, 1956. The field report states that the S½ sec. 2, NE¼ sec. 10 are fairly level to undulating in topography, cut by a wash along the east portion of the tract, and dissected by shallow gullies. The SE¼ sec. 10, is covered with low hills.

Soils on the lands are described in the field report as rocky, and dissected and eroded as a result of wind and water erosion. Due to water erosion the coarse parent materials from the surrounding hills have been deposited on the valley floor and action by the wind has removed the fine particles leaving only the coarse materials in place. As a result of the foregoing the surface of the major part of the lands is heavily littered with rocks and cobbles.

The field report also states that there is no surface water available for the irrigation of the land. It states that the nearest well in the area is the Wiley well, located approximately 5 miles from the lands sought and that an analysis of a sample taken from the well indicates that the water is not suitable for domestic or agricultural purposes. It also states that another well, Indian Well, located 9 miles west of the lands sought contains a high percentage of sodium, impairing the use of the water for agricultural or domestic purposes. The report states further that there were no agricultural developments in the vicinity at the time the lands were examined in April, 1956, and that there is no evidence of past attempts to develop any lands in the area.

Lands to be entered under the Desert Land Act, supra, must be of a character susceptible of reclamation for crop production by means of irrigation. Moreover, the applicant must acquire rights to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portions of the land sought. (43 CFR 232.13).

Section 7 of the Taylor Grazing Act, as amended (43 U.S.C., 1952 ed. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive Order 6910, as are the lands sought, which are more valuable or suitable for the

production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than the use provided for under the Act. Cf. William John Mauro, A-27318 (July 13, 1956); Cf. Ernest C. De Ford, et al., A-26591, etc. (February 6, 1953); 43 CFR 1954 ed., 296.1. In the exercise of this discretion the Secretary (or his delegate) decides whether a particular disposal would or would not be in the public interest. While every consideration is given to the interest and needs of the applicant in the particular case, the decision must properly consider the general or over-all effect that the disposal will have. The Department has held that it is proper to refuse to classify land for desert land entry when it is shown that the land is composed largely of rock outcrop, unsuitable for cultivation, and where the available evidence indicates doubt that the land is more suitable for desert land entry than for the production of native grasses and forage plants. Floyd Eakin, A-26574 (February 10, 1953), or in the absence of a showing that water is available to land which will not without irrigation produce an agricultural crop. Walter E. Scott, A-27293 (June 21, 1956). The Department has held further that before an agricultural classification is made it must be clearly shown that the lands applied for are in fact suitable for agricultural production. Cf. Harry E. Anderson, A-27313 (June 14, 1956).

Appellants' allegations that they propose to scrape off the desert pavement, that the land will grow crops with a minimum water supply, that the lands are located within 6 miles from the Wiley well, and other arguments advanced on appeal are not persuasive evidence of error in the classification of the land as unsuitable for desert land entry in the face of the information contained in the report of field examination which indicates that the soils on the land are rocky and eroded, that water from wells in the area is not suitable for irrigation purposes, and that there are no agricultural developments in the vicinity of the lands sought. In the absence of error which appears on the face of the record, the appellants must show by positive and substantial evidence that the classification of the land as unsuitable for desert land entry is erroneous. Mary Refugio Jackson, et al., A-27236, etc. (February 29, 1956).

After careful review and consideration of all of the evidence presented for the record, we can find no reason for modifying the Manager's decisions. Therefore, the decisions of the Manager of August 22, 1956, were correct and they are hereby affirmed.

Victoria M. and Herbert E. Barnes are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellants of this decision, and must be accompanied by a $5.00 filing fee for each application for which favorable action is sought. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the

Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H. Fuss

Attachment

DISTRIBUTION:

Mrs. Victoria M. Barnes (Certified Mail)
Mr. Herbert E. Barnes (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

29073

appeal to Sec
affirmed 4-30-58
A-27678

In reply refer to:

Los Angeles 0131630
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 5, 1958

Certified Mail
Return Receipt Requested

DECISION

Arthur M. Lelles	:	Desert Land
	:	
	:	

Appeal Dismissed

Arthur M. Lelles has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated October 24, 1957, which rejected his desert land application because of unfavorable water conditions.

The Manager stated that his decision was subject to the right of appeal to the Director of the Bureau of Land Management and that in the event an appeal was filed, full compliance was required with the provisions of 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. An information sheet containing pertinent provisions of the rules was attached to the decision mailed to the appellant.

Section 221.2 provides in part that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes with the statement: "The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice reads in part as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98...."

Section 221.98 provides in part that appeals to the Director will be subject to summary dismissal---

> "(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;..."

The appellant filed his notice of appeal on November 22, 1957. A statement of reasons should have been filed not later than December 23, 1957, since the thirtieth day after the notice of appeal was filed fell on Sunday. See 43 CFR, 1956 Supp., 221.96. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the rules of practice. The appeal is therefore dismissed.

Arthur M. Lelles is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H. Trow

Attachment

DISTRIBUTION:

Mr. Arthur M. Lelles (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

32292

In reply refer to:

Los Angeles 0143871
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 18, 1958

Certified Mail
Return Receipt Requested

DECISION

Randolph Ritchey	:	Desert Land

Appeal Dismissed

Randolph Ritchey has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office at Los Angeles, California, dated January 22, 1957, which rejected his desert land application because the land is embraced in an existing desert land entry.

The decision stated that the decision was subject to a right of appeal to the Director and that if an appeal was taken it must conform to 43 CFR 221.1 to 221.5 inclusive and to other pertinent sections of the Department's rules of practice.

Upon request from Mr. Ritchey the Manager further explained the procedure to be followed in taking an appeal and specifically informed him that if his notice of appeal did not contain a statement of the reasons for the appeal such a statement must be furnished to the Director within 30 days from the filing of the notice of appeal. A copy of Circular 1950 setting forth the applicable regulations was forwarded to Mr. Ritchey.

Section 221.1 provides for an appeal to the Director by any party adversely affected by a decision of an officer of the Bureau of Land Management other than the Director or persons signing for the Director. Section 221.2 provides in part that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes with the statement: "The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice reads in part as follows:

"Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98.* * *"

Section 221.98 provides in part that appeals to the Director will be subject to summary dismissal---

"(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *"

The appellant filed his notice of appeal on February 19, 1957. A statement of reasons should have been filed not later than March 21, 1957, the thirtieth day after the notice of appeal was filed. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the rules of practice. The appeal is therefore dismissed. Charles J. Brady v. George M. Kitchen, A-27461 (June 26, 1957).

The appellant did file, on March 4, 1957, in the Land Office at Los Angeles, a contest against desert land entry Los Angeles 039478. Nevertheless, this filing of a contest is not a statement of reasons in support of the appeal as contemplated in the regulations. However, the contest, Los Angeles 6801, will be considered on its individual merits by the Manager and the dismissal of the appeal of February 19, 1957, will in no way prejudice the consideration of the contest.

Mr. Ritchey is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

In

If appeal is taken by Mr. Ritchey, he must serve a copy of all documents on the heirs, beneficiaries, and successors in interest to May E. Patton listed in appendix A within 15 days after filing the document, and must send proof of that service as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H. Zuck

Attachment

DISTRIBUTION:

Mr. William Camil, Attorney at Law (Certified Mail)
Mr. Randolph Ritchey (Regular Mail)
Hon. D. S. Saund, Member of Congress
Appeals List No. 1
EVJ

APPENDIX A

Name	Address
Clement F. Patton	Rt. 2, Box 168 Redlands, California
Harry Robb Patton	Johnstown, Ohio
Florence Hamilton	3523 Prairie Avenue Berkley, Michigan
John M. Martin	3841 West 64th Street Chicago 29, Illinois
Dorothy R. Mitchell, pro se, and as Guardian of the Estates of Hale Martin and Theodore Martin	4291 Lugo Avenue, Lynwood, California

32292

If appeal is taken by Mr. Rivster, he must serve a copy of all documents on the Petty beneficiaries, and successors in interest to May E. Patton listed in appendix A within 15 days after filing the document, and with proof of that service as required by 43 CFR 221.31 and 221.32. Directly to the Secretary of the Interior, Washington 25, D. C., for this to be received there within 15 days after service, unless such proof accompanied the notice of appeal.

For the Director:

Attachment

DISTRIBUTION:

Mr. William Gemill, Attorney at Law (Certified Mail)
Mr. Randolph Fitchey (Regular Mail)
Hon. [illegible], Member of Congress
Appeals List No. 1
EW1

A P P E N D I X A

Name	Address
Clement F. Patton	Rt. 2, Box 158 Redlands, California
Harry Robb Patton	Johnston, Ohio
Florence Hamilton	1323 Prairie Avenue Berkley, Michigan
John N. Martin	3841 West 64th Street Chicago 29, Illinois
Dorothy M. Mitchell, [illegible], and as Guardian of the Estates of Kate Martin and Theodore Martin	4291 Lugo Avenue, Lynwood, California

In appeal to Sec

In reply refer to:
affirmed A-27,695 11/17/58
Los Angeles 0115123
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 19, 1958

Certified Mail
Return Receipt Requested

DECISION

John L. Johnson	:	Desert Land Application

Manager's Decision Affirmed

John L. Johnson has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated April 4, 1956, rejecting his application to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.). The application was rejected because a field investigation of the land applied for indicated that there were no natural sources of water for crops or domestic purposes and that any development of underground water sources will be too expensive and without practical results.

The appellant contends, among other things, that he has personally examined the land with a well driller and that he is convinced there is abundant water for irrigation from underground sources; that several wells have been drilled successfully near the lands applied for; and that the well driller who accompanied him to the land is willing to drill a 500-foot, 12-inch well for $2,500. The appellant submitted a statement from the well driller stating that underground water is available; that it can be developed at a reasonable cost; that he has successfully drilled water wells in the area; and that he would not hesitate to drill a 500-foot well for $2,500 in the land in question.

The field report shows that the land is situated about 7½ miles southwest of Mojave, California, and that it may be reached by a number of improved county roads from Highway 6 via Mojave or Rosamond; that the increased activity in manufacturing, airplane construction, and the Muroc Air Base has created a demand for desert homesites; and that electric power, domestic water supplies, and school bus service are available to the land. The land was found as being suitable for classification for homesite purposes only, under the

Small Tract Act. By Classification Order No. 471 of February 21, 1956, the land was classified for small tract homesites, and the order published in the Federal Register of March 1, 1956, at page 1374. The order states that the land shall not become subject to application or lease under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1952 ed., sec. 682a), as amended, until it is so provided by an order to be issued by an authorized officer of the Bureau of Land Management, opening the lands to application or lease with a preference right to veterans of World War II, the Korean Conflict, and others entitled to preference under the act of September 27, 1944 (43 U.S.C., 1952 ed., Supp. IV, 279-284), as amended.

The Department has rejected desert land applications on the ground that adequate water was unavailable and where the land is more suitable for small tract development. Noah Louis Beesemyer, A-25792 (February 28, 1950).

The appellant has presented the statement of a well driller that underground water is available. This statement of itself does not afford any substantial basis for changing the Manager's decision. Cf. Mary Refugio Jackson et al, A-27236 (February 29, 1956). The appellant refers to the existence of water wells in the area, but no details are given as to the volume of their discharge, the area cultivated, the type of crops raised, or the cost of reclamation. On the other hand, the Bureau's determination that the tract is more suitable for disposition under the Small Tract Act is supported by the results of a field examination which found the land proper for disposition as homesites under that act. Furthermore, it appears that the best use of the land in question would be the disposal of the land under the small tract program. Cf. Nelson A. Gerttula, 64 I.D. 225, 229 (1957).

The decision of the Manager is affirmed.

Mr. John L. Johnson is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the

Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H. Dunn

Attachment

DISTRIBUTION:

Mr. John L. Johnson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

32292

Director. Strict compliance must be made with the requirements of the rules of procedure, 43 CFR, 1224 Supp., Part 221, contained in Circular No. 1570, as amended by Circular No. 1842. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

Mr. John L. Johnson (Certified Mail)
Leads Land Office
Appeals Int No. 1
AIM

affirmed A-27708 9-22-58

In reply refer to:

Los Angeles 0109028, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Kathryn M. Skinner et al. : Desert Land Applications

Appeals Dismissed

Kathryn M. Skinner and four others* have appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Los Angeles, California, dated November 20, 1957, which rejected their applications for desert land entry.

The Manager stated his decisions were subject to the right of appeal to the Director of the Bureau of Land Management, and that in the event an appeal was filed, full compliance was required with the provisions of 43 CFR 221.1 to 221.5, inclusive, and to other pertinent sections of the rules of practice (Circulars 1950 and 1962).

Separate notices of appeal were filed by the appellants without stating the reasons for the appeals. Where a notice of appeal does not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed (43 CFR 221.3). Failure to do so subjects the appeal to summary dismissal as provided in section 221.98. Section 221.98 of the rules of practice states:

---

* Kathryn M. Skinner	Los Angeles	0109028
Earl H. Smith	"	0109306
Earl J. Smith	"	0109425
Willis T. Knowles	"	0120432
William L. Barber	"	0120433

"Sec. 221.98 Summary dismissal. An appeal to the Director or to the Secretary will be subject to summary dismissal by the officer to whom it is made * * *

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required."

* * * * * * * * *

An appeal will be dismissed where the appellant does not file a statement of reasons in support of his appeal within the time required by the rules of practice. Gerhard Evenson, 63 I.D. 331 (1956).

Statements of reasons were filed in the Land Office at Los Angeles, California, within the 30-day period allowed the appellants for filing such statements but did not reach the office of the Director until January 23, 1958, after expiration of the 30-day period. There is indicated below (1) the date each appellant filed notice of appeal, (2) the date 30 days thereafter on which each appellant was required to file in the office of the Director a statement of reasons in support of the appeal, (3) the date on which each statement of reasons was filed in the Land Office at Los Angeles, and (4) the date such statements were received in the office of the Director after being forwarded from the Land Office.

	Appeal Filed (1)	Statement of Reasons Due (2)	Statement of Reasons Filed in Land Office (3)	Statement of Reasons Received in Office of Director (4)
Kathryn M. Skinner	12-19-57	1-20-58	1-2-58	1-23-58
Earl H. Smith	12-12-57	1-13-58	1-7-58	1-23-58
Earl J. Smith	12-12-57	1-13-58	1-7-58	1-23-58
Willis T. Knowles	12-10-57	1-9-58	1-2-58	1-23-58
William L. Barber	12-11-57	1-10-58	1-6-58	1-23-58

Within the meaning of section 221.3 of the rules of practice, a document required to be filed in the office of the Director is not considered "filed" until such time as it is actually received in the Director's office. In Wilbert Phillips and Fletcher G. Edwards, A-27470 (September 23, 1957), the Department held that a document required to be filed in the office of the Director but sent to a land office, is not deemed to be filed with the office of the Director until such time as the document is actually received in the Director's office. Since the statements of reasons for the subject appeals were not filed in the office of the Director within the time allowed by the rules of practice, the appeals are dismissed.

Each appellant is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application on which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

G. H. Fun

Attachment

DISTRIBUTION:

Each Appellant (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

33950

In reply refer to:

Los Angeles 0104860
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Eldie L. Colburn : Desert Land

Appeal Dismissed

Eldie L. Colburn has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California, dated September 16, 1957, rejecting her application to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.).

The Manager stated that his decision was subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. The rules were set forth in an information sheet attached to the decision.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "* * * The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in

the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98. * * *"

Section 221.98 provides:

"Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal * * * for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *."

Appellant filed her notice of appeal on October 18, 1957. No statement of any ground for the appeal was included in the notice. A statement of reasons should have been filed not later than November 18, 1957. Since the thirtieth day fell on November 17, 1957, a Sunday, the filing of the statement of reasons on November 18, 1957, would have constituted a timely filing. See 43 CFR, 1956 Supp., 221.96. No such statement has been received, and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the regulations. The appeal is therefore dismissed.

Mrs. Eldie L. Colburn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Jurd

Enclosure

DISTRIBUTION:

Mrs. Eldie L. Colburn (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

33950

appeal to Sec

In reply refer to:

affirmed A-27709 9-22-5

Los Angeles 0151613
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 23, 1958

Certified Mail
Return Receipt Requested

DECISION

John Figi	: :	Desert Land

Appeal Dismissed

John Figi has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California, dated September 16, 1957, which rejected his application to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.).

The Manager stated that his decision was subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. The rules were set forth in an information sheet attached to the decision.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "* * *The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98. * * *"

Section 221.98 provides:

"Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal * * * for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *"

Appellant filed notice of appeal in the Land Office at Los Angeles, California, on October 14, 1957. No statement for any ground for appeal was included in the notice. On November 13, 1957, the statement of reasons was received at the Land Office at Los Angeles. It was forwarded to the office of the Director in Washington 25, D. C., and was received there on November 19, 1957. The 30 day period within which the statement of reasons must be filed in the office of the Director had expired on November 13, 1957.

Within the meaning of 43 CFR 221.3, supra, a statement of reasons is not filed until it is actually received in the office of the Director. The appeal is therefore dismissed. Wilbert Phillips et al., 64 I.D. 385 (1957).

Mr. John Figi is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulation.

If an appeal is taken by Mr. John Figi, then the adverse party to be served is:

Mr. Walter E. Scott
P. O. Box 283
Blythe, California

For the Director:

A. H. Kirr

Enclosure

DISTRIBUTION:

Mr. John Figi (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

33950

appeal to Sec
affirmed A-27711 10-30-62

In reply refer to:

Los Angeles 0137690
0138131
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1958

Certified Mail
Return Receipt Requested

DECISION

Elizabeth Holmes MacDonald Hugh John MacDonald	:	Desert Land Entry

Manager's Decisions Affirmed As Modified

Elizabeth Holmes MacDonald and Hugh John MacDonald have taken this appeal to the Director of the Bureau of Land Management from two decisions by the Manager of the Bureau Office at Los Angeles, California, dated February 2 and 15, 1956, respectively. The decisions rejected their applications for desert land entries by reason that the subject lands were withdrawn from entry and all forms of disposal under a first form withdrawal pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388). The withdrawal order was dated October 19, 1920.

The appellants contend that the land is not subject to the Withdrawal Order of October 19, 1920. Their reasoning is that the subject lands lie within the boundaries of the Imperial Irrigation District, and are therefore subject to the Smith Act of August 11, 1916 (39 Stat. 506, 43 U.S.C., 1952 ed., 621-630) and that pursuant to such act, the aforementioned district filed application and maps with the Secretary of the Interior which were approved on February 26, 1921, and that under the ruling in the case of Bill Fults, 61 I.D. 437 (1954) the lands were subject to entry.

The Smith Act, supra, had as its principal purpose the rendering of public lands within a state irrigation district, whether lands subject to entry or entered but unpatented, subject to bearing a proportionate share, along with privately owned lands in the district, of construction, operating and maintenance costs of the district's irrigation system. Under the act a state irrigation district may submit a map to the Secretary of the Interior, together with an irrigation plan

for lands within the district, including lands of the United States which are either unentered, but subject to entry, or entered but unpatented. (Sec. 3, 43 U.S.C., 1952 ed., sec. 623). Upon approval of the map and plan by the Secretary, the aforesaid lands of the United States, become subject to state irrigation district laws in the same manner as privately-owned lands in the district. Section 2 of the act provides that all legal assessments against such lands shall become a lien on unentered lands and on lands covered by unpatented entries included in an irrigation district.

The appellants have based their appeal on the Departmental ruling in the case of Bill Fults, supra, which held that unentered lands designated by the Department as subject to the Smith Act, carried with it a valid existing right in the Imperial Irrigation District to impose a lien against such land for its proportionate share of construction, operation and maintenance costs, with a view towards having such a lien satisfied by an applicant for entry as a condition precedent to entry. Because of the existence of this right, a subsequent first form withdrawal did not operate to withdraw such land from public entry as contemplated under the Smith Act.

In the Fults case the land was designated by the Secretary as being subject to the Smith Act on February 26, 1921, and the withdrawal in that case was dated June 4, 1930. However, the present case differs from the Fults case in that the Withdrawal Order was dated October 19, 1920, and the Designation by the Secretary was on February 26, 1921.

As to this matter the appellants contend that although the withdrawal order was prior to the approval or designation by the Secretary, that the filing of the application, maps and plans on May 6, 1920, a date prior to that of the withdrawal, afforded the district a prior valid right and that therefore the withdrawal of October 19, 1920, did not operate to withdraw such land from entry as contemplated by the Smith Act.

There appears to be no question, under the ruling of the Fults case, that when a withdrawal order is subsequent to the designation by the Secretary that such order does not operate to withdraw the lands from entry under the Smith Act. The question is then, did the land involved in these cases, then unentered public land subject to entry, remain unaffected by the Withdrawal Order of October 19, 1920, when the filing of the maps and plans for the district was made prior to the withdrawal date, but approval of the Secretary was subsequent to the withdrawal order.

The answer to this question hinges upon the effect of an application and whether the mere filing of an application, subsequently approved, afforded any prior valid right existing at the time of the withdrawal order.

The filing of the maps, plans, etc., is required both by the Smith Act and pertinent regulations (43 CFR Sec. 231.2) as a prerequisite to approval by the Secretary. 43 CFR Sec. 231.13 provides "* * * Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void." Sec. 231.14(c) states "* * * The approval of a legally organized irrigation district by the Secretary of the Interior * * * makes the public lands within such district * * * subject to a lien for all taxes and assessments thereafter lawfully levied * * *."

The Withdrawal Order of October 19, 1920, expressly safeguarded valid existing rights. George B. Willoughby, A-25292 (September 21, 1949).

After the decisions in the cases of Payne v. Central Pacific Railway Co., 255 U.S. 228 (1921) and Payne v. New Mexico, 225 U.S. 367 (1921) the Department applied the previously more or less settled rule that when a person has done all that the law requires to entitle him to an entry or to obtain a right under the public land laws, he had, in the eye of the law, obtained that right even though it had not been acknowledged or recognized by the Land Department. See John F. Silver, 52 I.D. 499 (1928).

In the Silver case, supra, at page 500 the First Assistant Secretary concluded his statement of the rule as follows:

> "In other words mere administrative delay in recording or putting a claim of record for lands subject to entry does not in anywise affect the legal operation of a valid application. However, it should be noted that the rule is pertinent only to cases where, upon the face of the record, the applicant is qualified and the land subject to appropriation by entry at the date of the application."

In the case of John J. Maney, 35 L.D. 250 (1906) the Department held that the mere filing of a homestead application did not affect the withdrawal of the land for reclamation purposes under the provisions of the Reclamation Act of June 17, 1902.

However, the Maney case was modified by a Departmental Order issued on June 18, 1921; (38 L.D. 153), in view of the Supreme Court decisions in Payne v. Central Pacific Railway Co. and Payne v. New Mexico, supra.

Paragraph 13 of this Departmental Order provided as follows:

> "After lands have been withdrawn under the first form they can not be entered, selected, or located in any manner so long as they remain withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied." (Emphasis added.) Cf. 43 CFR 230.12.

Moreover, in the case of Charles C. Conrad, 39 L.D. 432 (1910), where a homestead entryman had filed a completed application, but by reason of delay in action thereupon by the local office a first form reclamation withdrawal under the reclamation act intervened, the Department held that his rights could not be prejudiced by the inability of the local office to allow the application until after the withdrawal. The Department held that his rights related back to the time when he filed in the local land office his application, accompanied by the required showing, including the fees, the land being then subject to his application.

In the Secretary's Instructions of April 23, 1921, 48 L.D. 98, it was pointed out that the ruling in the Conrad case and similar rulings of the Department had been approved in principle by the decisions of the Supreme Court of the United States in the cases of Payne v. Central Pacific Railway Co., Payne v. New Mexico, supra, and Wyoming v. United States, 255 U.S. 489 (1921). Accordingly, the land in the instant case remained unaffected by the withdrawal of October 19, 1920, because the subsequent designation of the land as subject to the Smith Act related back to the date of the filing of the completed application by the Imperial Irrigation District.

However, the applications are not in compliance with the regulations in certain aspects. The applicants and their witnesses have not stated their occupations (43 CFR 232.11). Although the applicants assert that they expect to obtain their water supply from the Imperial Irrigation District, they have not submitted copies of the contracts or, in the event they were unable to obtain such contracts in advance of the allowance of the entries, they should have submitted some written assurance from the responsible officials of the District that if the entries were allowed, the applicants would be able to obtain from that source the necessary water. The applicable regulation, 43 CFR 232.13 further provides that "All applications not accompanied by the evidence above indicated will be rejected." The applications should have been accompanied by evidence that the water rights acquired or to be acquired will be to the permanent use of a quantity of water which is sufficient to irrigate all the irrigable area of each subdivision applied for. Sufficiency of irrigation water means that the quantity to which rights have been or are to be obtained is equal at least to the minimum seasonal and annual

irrigation water requirement of the irrigable area of such subdivision applied for. This is computed as equivalent to minimum satisfactory seasonal and annual irrigation water requirements on existing irrigated farms in the area having soils similar to the lands applied for, after allowance for any differences in water transportation losses.

The applications are also deficient in that the following data is lacking:

If by direct diversion or storage, a statement showing the name, character and volume of the flow of the stream, spring, or other source, and whether perennial or intermittent, or if by artesian wells or pumping from nonartesian ground water, a statement as to existence of such water supply upon or near the land involved. This includes the location, depth, drawn-down water level, and flow of other wells theretofore sunk and affording water supply to adjoining or nearby lands or a statement that there are none.

Whether, when and by whom surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works (diversion, canal, flume, pump, etc.) to convey water to the land.

Whether the works are to be built by an irrigation district, corporation, or association or by the applicant himself together with a general description of the proposed plan. If the applicant individually, or in association with others, proposes to construct the works (e.g., the drilling of a well and installation of a pump), a statement showing the estimated cost and other essential data. If the source is ground water, such "essential data" includes:

(a) Location and diameter, of proposed well.
(b) Size of pump (diameter of discharge pipe, and volume of discharge in gallons per minute or other measure.)
(c) Source of power for the pump.

Showing as to land itself (43 CFR 232.14)
(a) Approximate altitude.
(b) Character of the soil. This may be by reference to a published soil survey report or map, or by stating the texture of the soil, such as silty loam, sandy loam, etc.

On the basis of the failure of the appellants to make the above showings, the applications were subject to rejection.

The decisions of the Manager are therefore affirmed, as modified.

This decision is without prejudice to the right of the applicants to file new desert land applications in conformity with the regulations, subject to intervening rights.

Elizabeth Holmes MacDonald and Hugh John MacDonald are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:

Mrs. Elizabeth Holmes MacDonald (Certified Mail)
Mr. Hugh John MacDonald (Certified Mail)
Mr. J. Edward Kahlow (Regular Mail)
Appeals List No. 1
JLR

33950

In Reply Refer To:
Los Angeles 0113448
0135709
0139585
0139588
0151097
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D.C.

May 1, 1958

Certified Mail
Return Receipt Requested

DECISION

Jack K. Jewett et al. : Desert Land

Appeals Dismissed

Jack K. Jewett, Lyle M. McCann, Alexander Tucker, Gummo Marx, and William Winter have appealed to the Director, Bureau of Land Management, from decisions of the Manager of the Land Office, Los Angeles, California, dated September 16, 1957, rejecting their applications to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.).

The Manager stated that his decisions were subject to the right of appeal to the Director of the Bureau of Land Management and that in prosecuting an appeal full compliance was required with 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. The rules were set forth in an information sheet attached to each decision.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> " * * * The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98. * * *"

Section 221.98 provides:

"Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal * * * for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *"

Appelants, through their attorney, filed separate notices of appeal on October 15, 1957, in the Land Office at Los Angeles, California. No statements of any ground for appeal were included in the notices. However, the appellants stated in their notices of appeal that necessary briefs and documents in support of the appeals would be filed within 30 days. On November 14 1957, the statements of reasons were received at the Land Office at Los Angeles. They were forwarded to the office of the Director in Washington, D.C., and were received there on November 25, 1957. The 30 day period within which the statements of reasons were required to be filed in the office of the Director had expired November 14, 1957.

Within the meaning of 43 CFR 221.3, supra, a statement of reasons is not filed until it is received in the office of the Director. Since the statements of reasons were not filed with the office of the Director within the time specified in the rules of practice, the appeals must be dismissed. James V. A. Carter, A-27487 (October 21, 1957).

Mr. Jack K. Jewett, Lyle M. McCann, Alexander Tucker, Gummo Marx, and William Winter are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeal is taken by any of the parties named above then the adverse party to be served is:

Mr. Walter E. Scott
P. O. Box 283
Blythe, California

For the Director:

A. H. Durr

Attachment

DISTRIBUTION: (see page 3)

DISTRIBUTION:

Mr. Iener W. Nielsen, Attorney for Appellants (Certified Mail)
Mr. Jack K. Jewett (Regular Mail)
Mrs. Lyle M. McCann (Regular Mail)
Mr. Alexander Tucker (Regular Mail)
Mr. Gummo Marx (Regular Mail)
Mr. William Winter (Regular Mail)
Mr. Walter E. Scott (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

35615

appeal to Sec
affirmed A-27774 12-12-58

In reply refer to:

Los Angeles 0119435, et al.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management May 5, 1958
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

John K. Stanifer, et al. : Desert Land

Manager's Decisions Affirmed

John K. Stanifer and other desert land applicants, shown in Appendix "A", have appealed to the Director, Bureau of Land Management, from decisions of the Manager of the Land Office, Los Angeles, California, rejecting their applications to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.). The applications were rejected on one or more grounds -- (1) because the soil in the land applied for is unfit for cultivation; (2) because the topography of the land applied for is such as to make it unfit for cultivation; and (3) because the land sought is outside the known boundary of any ground water basin.

The appellants contend that sufficient water can be obtained through the drilling of wells on the lands applied for. Five of the appellants 1/ have submitted supporting statements by Norman L. Goss, President of the Wynding Ranch, C. T. Simmons, General Manager of the Silver River Ranch, and by water well locators and water well drillers, stating that underground water is available in the lands applied for, and that there are a number of water wells in the area which produce water in commercial quantities. Another appellant 2/ submitted a soil analysis report from the Hollywood Testing Laboratories. Two of the appellants 3/ state that the land is in the boundary of ground water basin which supplies many ranches in the area. One of the appellants 4/ states that the Lockhart Ranch, located nearby, has some large wells, and that the land has been successfully irrigated on a large scale.

1/ Judy Larson Dunklin (Los Angeles 0134104), Edwin Elmer Koenke (Los Angeles 0139515), Alfonzo Lawrence Dunklin (Los Angeles 0139517), Lawrence William Dunklin (Los Angeles 0139837), and Dale Keith Issacs (Los Angeles 0123779).
2/ Diana G. Randolph (Los Angeles 0136001).
3/ Bailise B. Cole (Los Angeles 0141191) and Sydney S. Cole (Los Angeles 0141192).
4/ Dale Keith Isaacs (Los Angeles 0123779).

The appeals considered herein involve lands located in the same general vicinity as all of the lands are within townships 6, 7, 10, and 11 north, ranges 2, 3, 4, 5, and 7 west, S. B. M., California, which lie in or immediately adjacent to Mojave Valley or in Harper Valley, two of the eight inter-connected but physiographically distinct ground water basins which compose the Mojave River drainage basin.

The lands applied for were found to be unsuitable for desert land entry as the result of various area examinations which revealed that rainfall in the entire area examined is so low that sustained crop production cannot be achieved without irrigation; that the only known source of water available for irrigation of the public lands in the area is underground water derived from the underflow and leakage of the Mojave River, which runs through the basin; that on the basis of geologic evidence and information obtained through the study of the many wells which have been drilled in the Mojave and Harper Valleys, underground water is available only to those portions of the valleys influenced by the river; that beneficial use of that water is now being made by lands already under irrigation; that the present use of the underground water in Mojave and Harper Valleys already exceeds the long-time annual inflow available for beneficial use in the whole drainage area; and that further agricultural development in those valleys through irrigation would result in an overdraft of the replenishable water supply reaching the basin.

The conclusion was reached that wells drilled outside of the delineated boundary of the so-called zone of influence of the Mojave River would not supply adequate water for irrigation purposes because of low yields, prohibitive pump lifts, or both. The conclusion is supported by many unsuccessful wells which have been drilled in the two valleys.

Before any of the public lands in California withdrawn by Executive Order No. 6910 dated November 26, 1934, as were all of the lands involved in these appeals, can be restored to entry under the desert land laws, they must first be classified, in the discretion of the Secretary of the Interior, as suitable for entry under that law (43 U.S.C., 1952 ed., sec. 315f). Desert land entry in California based on the use of percolating water for the reclamation of the land, which these desert land applicants intend, is allowable only when, in the exercise of the discretion vested in the Secretary of the Interior, it is determined that there is a sufficient supply of percolating water to enable the reclamation of the entry, taking into consideration the rights and needs of other lands for such percolating water. Ruby E. Huffman et al., 64 I.D. 57 (1957).

In view of the findings of the field examination it would appear that the showings made by the individual appellants are not sufficient to establish that the classification of the land as unsuitable for desert land entry is erroneous. It thus appears from the evidence contained in the record that the land applied for was correctly classified as unsuitable for agricultural development. Before land may be classified for desert land entry, it must be shown affirmatively that the lands are suitable for agriculture. On the basis of the evidence contained in the record, it does not appear that the appellants have overcome the adverse classification, and there is no evidence in the record to show that classification is erroneous. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

With respect to Mr. Isaacs contention that the Lockhart Ranch has successfully irrigated many thousands of acres in the same valley despite the fact that the ranch is out of the zone of influence of the Mojave River seepage waters, a field examination shows that a great part of the Lockhart Ranch is within the zone of influence of the Mojave River waters and that attempts made by Mr. Lockhart to drill wells on the ranch outside the zone of influence have resulted in failure.

The Manager rejected two of the applications 5/ because of the unsuitability of the land for agricultural purposes. However, since the records show further agricultural development in the Mojave and Harper Valleys through irrigation would result in an overdraft of the replenishable water supply reaching the basin, these two applications cannot be allowed because of that factor.

It has not been demonstrated that water is available to any of the lands involved in the appeals in sufficient quantity to permit the applicants to meet the requirements of the desert land law. In the case of Andrew T. Johnson et al., A-27305 (September 25, 1957), the Department stated that it is proper to classify land as unsuitable for desert land entry where no adequate showing has been made that water is available for the reclamation of the land.

Accordingly, the decisions of the Manager are hereby affirmed.

5/ Los Angeles 0123309 because of topography in addition to the lack of water and Los Angeles 0136001 because of the poor quality of the soil.

The parties listed in Appendix "A" are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Clyde Doyle, House of Representatives
Each appellant (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

35615

A P P E N D I X "A"

Name of Applicant	Serial Number	Address
	Los Angeles	
Major John K. Stanifer	0119435	21st Field Maintenance Spdn. APO 247, New York, N.Y.
Mr. James M. Brust	0123309	1564 So. Beverly Drive Los Angeles 35, Calif.
Mr. Dale Keith Isaacs	0123779	c/o L. M. Mayes, 2442 Palo Verde Ave. Lone Beach 15, California
Mrs. Judy Larson Dunklin	0134104	142 No. Bright Ave., Whittier, California
Mrs. Diana G. Randolph	0136001	P. O. Box 2670 Hollywood 28, California
Mrs. Leona C. Henry	0136407	4021 Lyceum Avenue, Los Angeles 66, California
Mr. Edwin Elmer Koenke	0139515	9349 Dork Street, Pico, California
Mr. Alfonzo Lawrence Dunklin	0139517	142 North Bright Ave. Whittier, California
Mr. Lawrence William Dunklin	0139837	142 North Bright Ave. Whittier, California
Mrs. Bailise B. Cole	0141191	10509 Ayres Avenue Los Angeles 64, California
Dr. Sidney S. Cole	0141192	10509 Ayres Avenue Los Angeles 64, California

A P P E N D I X "A"

Name of Applicant	Serial Number	Address
	Los Angeles	
Major John R. Brandler	01[illegible]25	21st Field Maintenance Squdn. APO 217, New York, N.Y.
Mr. James H. Brust	012[illegible]09	1554 So. Beverly Drive Los Angeles 35, Calif.
Mr. Dale Keith Isaacs	012[illegible]79	c/o L. K. Meyers, 2142 Palo Verde Ave. Long Beach 13, California
Mrs. Judy Larson Dunklin	01[illegible]10A	142 So. Bright Ave., Whittier, California
Mrs. Diana G. Kurtolyk	01[illegible]001	P. O. Box 2[illegible]19 Hollywood 28, California
Mrs. Leona C. Mercy	01[illegible]407	4021 Lyceum Avenue Los Angeles 65, California
Mr. Edwin Elmer Moore	01[illegible]515	329 Park Street, Pico, California
Mr. Alfonso Lawrence Dunklin	01[illegible]217	142 North Bright Ave. Whittier, California
Mr. Lawrence William Dunklin	01[illegible]37	142 North Bright Ave. Whittier, California
Mrs. Lallie B. Cole	01[illegible]1A1	10509 Ayres Avenue Los Angeles 64, California
Mr. Sidney S. Cole	01[illegible]1B2	10509 Ayres Avenue Los Angeles 64, California

In reply refer to:
Los Angeles 0116569
0134670
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C.

May 5, 1958

Certified Mail
Return Receipt Requested

DECISION

Richard Worth Lyon, Jr. : Desert Land Application

Decision of the Manager affirmed as to Desert land Application 0116569, Special Land-use Permit Application 0134670 Rejected

Richard Worth Lyon, Jr. has appealed to the Director, Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated January 23, 1956, which rejected his desert land application Los Angeles 0116569 because the topography of the lands was too rough for cultivation and because of insufficient evidence of an adequate supply of water to irrigate all of the irrigable part of the lands sought.

Appellant alleges on appeal that he has surveyed the lands and examined the soils and found them highly favorable; that a prior decision issued on June 20, 1955 by the Manager of the Land Office indicated that the only deficiency in his application at that time was an inadequate showing as to "plan of irrigation"; and that he has filed application for a special land-use permit to enable him to enter upon the land to explore for underground water to determine if an adequate water supply can be developed by wells for the irrigation of the lands.

The subject lands were found to be unsuitable for desert land entry as a result of various area examinations which revealed that the only known source of water available for the irrigation of the public lands in the area is underground water derived from the underflow and leakage of the Mojave River, which drains the area; that on the basis of geologic evidence and information obtained as a result of the study of the many wells which have been drilled in the Mojave and Harper Valleys, underground water is available only to those portions of the valley that are indirectly influenced by the River; that beneficial use of that water is now being made by lands already under irrigation; that the present use of the underground water in the Mojave Valley already exceeds the long-time annual inflow available for beneficial

use in the whole drainage area; and that any further agricultural development which would require further additional use of underground water would result in an overdraft of the replenishable water supply within the basin.

Moreover, it was concluded that wells drilled outside of the delineated boundary of the so-called "zone of influence" of the Mojave River would not supply adequate water for irrigation purposes because of the low yield of wells, prohibitive pump lifts, or both. This position is supported by evidence of many unsuccessful wells in the Mojave Valley.

In Ruby E. Huffman et al., 64 I.D. 57 (1957) the Department held that a desert land application by an applicant who proposes to appropriate percolating water for the irrigation of the lands is allowable only if it is determined there is an adequate water supply available for the irrigation, taking into account the demands placed upon the available water supply and the water requirements of other lands being irrigated in the area. Moreover, by a decision issued September 25, 1957, the Department decided that desert land applications for lands lying outside the "area of influence" of the underground basin of the Mojave River Basin, as are the subject lands, were properly rejected because there was insufficient evidence of an adequate water supply to warrant their classification as suitable for desert land entry. 1 / Andrew T. Johnson et al., A-27305 (September 25, 1957).

Though appellant states in his desert land application that he proposes to irrigate the lands by pumping from wells, he submitted no evidence of water rights or any information concerning the existence of an underground water supply for the irrigation of the lands as required by the regulation embodied in 43 CFR, 1954 ed., 232.13, 232.14(a). However, on July 13, 1955, he filed application for special land-use permit to explore for water and drill a well to make the required showing as to the availability of water for irrigation. It has been held by the Department that a special land-use permit may be issued, at the discretion of the Secretary, to permit a desert land applicant to go upon the lands to determine whether or not water is available for irrigation. Jack B. Aldridge et al., A-27520 etc. (March 12, 1958). Such procedure

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1 / The subject application is for lands described as the N½ Sec. 7, T. 8 N., R. 5 W., S.B.M., California. The Johnson case, involved a large number of applications for lands in various parts of the Mojave Basin, however, five of the applications were for lands located in Sec. 4, T. 8 N., R. 5 W.; Sec. 2, T. 8 N., R. 6 W.; and Sec. 23, T. 9 N., R. 6 W. most of which lie at an identical elevation within the drainage and an equal distance from the alluvium deposits in the valley floor of the Mojave River which describes the boundaries of the underground reservoir and the "area of influence" of the Mojave River Drainage.

is not applicable to the instance case since the record states that the topography of the lands is too rough, there is no ground water available for the irrigation of additional lands in the drainage basin, and because of the many past failures in the development of similar type lands due to the low yield of wells and prohibitive pumping costs. Therefore, the desert land application could not be properly allowed.

After careful consideration of the evidence in the record it is concluded that the decision of the Manager which rejected desert land application Los Angeles 0116569 was correct and it is hereby affirmed, and application for special land-use permit, Los Angeles 0134670 is hereby rejected.

Mr. Richard Worth Lyon, Jr. is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dwor

Enclosure

DISTRIBUTION:
Richard Worth Lyon, Jr. (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

35615

is not applicable to the instance case since the record states that the topography of the lands is too rough, there is no ground water available for the irrigation of additional lands in the vicinity south, and because of the many past failures in the development of similar type lands due to the low yield of wells and prohibitive pumping costs. Therefore, the desert land application could not be properly allowed.

After careful consideration of the evidence in the record it is concluded that the decision of the Manager which rejected desert land application Los Angeles 011656 was correct and it is hereby affirmed, and application for special land-use permit, Los Angeles 011656 is hereby rejected.

Mr. Richard Worth Lyon, Jr. is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 1-1855. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Richard Worth Lyon, Jr. (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CRM

In reply refer to:
Los Angeles 0124790
5.04g

May 5, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington, D. C.

Certified Mail
Return Receipt Requested

DECISION

Frederick F. Floto	:	Desert Land Application

Manager's Decision Affirmed

Frederick F. Floto has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated February 10, 1955, which rejected his desert land application as to the N½NW¼, sec. 6, T. 6 S., R. 23 E., S.B.M., California, because it is within a first form reclamation withdrawal.

The appellant contends that the land has been released by the Bureau of Reclamation. A check of the records in the Bureau of Land Management reveals that the land in issue was withdrawn on February 19, 1929, under a first form withdrawal pursuant to section 3 of the Reclamation Act of June 17, 1902 (43 U.S.C., 1952 ed., sec. 416), for use of the Bureau of Reclamation in connection with the Colorado River Storage Project. The land, according to the records of the Bureau of Land Management, is still withdrawn for that purpose and is therefore not subject to entry.

The regulations of the Department, 43 CFR 230.12, provide that lands embraced in a first form withdrawal cannot be "entered, selected, or located in any manner so long as they remain so withdrawn" and applications for such lands must be rejected. Alma Everett Morris et al., A-27235 (December 12, 1955).

It is well settled that where land is not subject to entry or other disposition under the public land laws, an application to enter the land must be rejected. Elmer U. Wright, A-26975 (September 27, 1954). The Department has held that applications for withdrawn lands may not be held in suspense until the restoration of the land to entry and then considered as if filed at the instant that the land is restored to entry. Emily Juanita Miller, A-26966 (September 20, 1954.

Accordingly, the Manager's decision is affirmed.

After this decision becomes final, the record will be returned to the Land Office Manager for further processing of the application as to the balance of the land sought.

This decision is without prejudice to the appellant's filing a petition for the restoration of the land to entry with the Bureau of Reclamation, Washington 25, D. C. In the event it should be decided by that Bureau to release the lands in question and they are restored to entry by the Bureau of Land Management, the appellant would not have any preferential right to enter the lands on the basis of his present application. George D. McGhee et al, A-26325 (February 15, 1952). In such event, the lands would be subject to the provisions of section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., sec. 282), which accords to honorably discharged veterans of World War II, the Korean Conflict, and others a preference right of 90 days to file applications under the homestead or desert land laws or under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a), for land restored from withdrawals.

Mr. Frederick F. Floto is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Jun

Enclosure

Distribution:

Mr. Frederick F. Floto (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

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In reply refer to:

Los Angeles 0120121
5.04g

May 12, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25 D. C

Certified Mail
Return Receipt Requested

DECISION

Bernice Christensen	:	Desert Land Application

Decision of the Manager Affirmed

Bernice Christensen has appealed to the Director, Bureau of Land Management from a decision of the Manager of the Land Office Los Angeles, California, dated February 15, 1955, which rejected her desert land application because the land sought varies from broken and choppy to rough and mountainous land and is therefore not suitable for cultivation.

Appellant alleges that the land is not broken and choppy or mountainous and that the land is suitable for farming. Appellant also quoted section 232.27 from Circular 474 issued December 18, 1928, and contends that she is able and willing to comply with the requirements for entry under the Desert Land Act.

The approved report of field examination states that the land is situated on the alluvial slopes surrounding Pahrump Valley which extend down into the extreme southern end of the valley. Though the slopes are gentle in grade, they are irregular and broken and the land is dissected by two drainage channels and is susceptible to both surface and gully erosion. However, the primary deficiency results from the inadequate supply of water available for the irrigation of the land. This conclusion is based upon records compiled by the Division of Water Resources, State of California, concerning depths to water output and drawdown of wells, and other pertinent data pertaining to water production from wells in Pahrump Valley and the vicinity of the lands sought. 1/

Before a desert land application can be allowed it must be determined by classification that the land is susceptible to crop production by irrigation as contemplated by the Desert Land Act of March 3, 1877 (43 U.S.C. 1952 ed., sec. 321 et seq.) Cf William John Mauro, A-27318 (July 13 1956) The Department has consistently held

1/ There are no perennial streams or other sources of surface water supplies in Pahrump Valley

that a desert land application for land of doubtful character for irrigated production is properly rejected Floyd Eakin, A 26574 (February 10 1953); Mary Refugio Jackson et al., A-27236 etc (February 29 1956). In the absence error on the face of the record the appellant must show by positive and conclusive evidence that the adverse classification is erroneous. Mary Refugio Jackson et al., supra.

It is clear from the foregoing that the land sought by Bernice Christensen cannot be properly classified as suitable for entry under the provisions of the Desert Land Act supra. However, the application could not be properly allowed even though the land was found to be suitable for irrigation as a review of the application shows that it is deficient as it does not conform to the requirements of the regulation of the Department in 43 CFR 1954 ed., Part 232.

First, a desert land applicant must furnish with the completed application Form 4-274 evidence of water rights in accordance with 43 CFR 1954 ed., 232.13. This must consist of a statement supported by evidence of a water right meeting one of the following applicable standards:

(1) If applicant has already acquired a water right by appropriation, a certified copy of court decree or other instrument evidencing a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought.

(2) If applicant has already acquired a water right by purchase, a certified copy of the deed or other instrument evidencing a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought.

(3) If applicant has entered into a contract by which he has a right to acquire a water right, a certified copy of the contract evidencing that the right is to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought.

(4) If applicant has not already acquired a water right, but has initiated and prosecuted as far as possible appropriate steps looking toward the same, a statement to that effect accompanied by other documentary evidence as may be applicable under one of the following situations:

(a) Certified copy of application to appropriate water as submitted to State Department of Water Resources.

(b) Certified copy of assurance by water district or water company officers that a necessary quantity of water rights or shares will be transferred to applicant.

(c) Statement by applicant of his intention to acquire a right by actual appropriation or other legal procedure under the laws applicable in the State if application cannot properly be filed with the State Department of Water Resources.

Whichever one of the above standards is applicable, the evidence presented must show that the water rights acquired or to be acquired will be to the permanent use of a quantity of water which is sufficient to irrigate all of the irrigable area of each subdivision applied for. "Sufficient irrigation water" is interpreted as equivalent to the seasonal and annual irrigation water requirement of the irrigable area of all of the subdivisions applied for. The water requirement is to be based upon typical irrigation water requirements for existing irrigated farms in the area having soils similar to the lands applied for, giving consideration for variations in water transportation losses.

The appellant should have submitted plausible presumptive evidence to show that an adequate supply of ground water is available that can be appropriated which will meet the seasonal requirements for the production of irrigated crops on all of the irrigable portions of the land. Such evidence must be based upon water production and irrigation operations of nearby irrigation wells hydrological and geological studies, or other appropriate evidence of the occurrence of underground water which may be appropriated for the irrigation of the land. Appellant has merely indicated that she proposes to irrigate the land by drilling a well on the land and has furnished no plausible presumptive evidence that an adequate irrigation water supply is available. Cf. Ezra M. Carter Harry Fogliatti, A-26165 (October 5, 1951). Failure to make the necessary showing as to water is alone a sufficient basis for the rejection of the application. 43 CFR 1954 ed., sec. 232.14.

Second, an applicant must submit with his application Form 4-274 a plan of irrigation in accordance with 43 CFR 1954 ed. 232.14 as follows:

(1) Plans describing the source of water is to accompany Form 4-274 including one of the following, as applicable:

(a) If by direct diversion or storage, a statement showing the name, character and volume of the flow of the stream, spring, or other source, and whether perennial or intermittent.

(b) If by artesian wells or pumping from nonartesian ground water, a statement as to existence of such water supply upon or near the land involved. This includes the location, depth, static water level, draw-down water level, and volume of flow of other wells theretofore sunk and affording water supply to adjoining or nearby lands, or a statement that there are none.

(2) Plans describing the irrigation works to accompany Form 4-274. These are to include both of the following:

(a) Whether when and by whom surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works (diversion, canal, flume, pump, etc.) to convey water to the land.

(b) Whether the works are to be built by an irrigation district, corporation, or association or by the applicant himself together with a general description of the proposed plan. If the applicant individually or in association with others proposes to construct the works (e.g., the drilling of a well and installation of a pump), a statement showing the estimated cost and other essential data. If the source is ground water, such "essential data" includes:

(1) Location and diameter, of proposed well.

(2) Size of pump (diameter of discharge pipe).

(3) Volume of discharge of the pump(in gallons per minute or other measure.)

(4) Source of power for the pump.

Appellant submitted with his application nothing more than a sketch showing the location of the proposed well and the possible location and direction of flow of ditches and drains. Such is not an adequate showing as to the proposed plan of irrigation. (43 CFR, 1954 ed., 232.14).

Third, an applicant must file with the application Form 4-274 a showing concerning the character of the land itself (43 CFR,1954 ed., 232.14). This must show:

(1) The character of the soil. This may be by reference to a published soil survey report or map or by sketching and describing the texture of the soil, such as silty loam, sandy loam, etc., for each of the legal subdivisions

applied for. Depth of top soil and character of subsoil including any impediment to drainage should also be described if known.

(2) The approximate irrigable area of each legal subdivision. This may be by map or sketch or by stating in figures the number of irrigable acres in each subdivision.

(3) Applicant must submit a map showing the position and direction of flow in all proposed main and lateral irrigation ditches or pipes on the land.

(4) The topographical features of the irrigable portion of each of the legal subdivisions applied for. (this is preferably shown by use of elevation contours)

It is evident that appellant failed to make the proper showing as to the character of the land which in and of itself was a proper basis for the rejection of the application. See 43 CFR, 1954 ed., 232.14(b).

After careful consideration of all of the evidence in the record it is concluded that the Manager committed no error by rejecting the desert land application and his decision of February 15, 1955 is hereby affirmed.

Bernice Christensen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365 In taking an appeal there must be strict compliance with the regulations.

Enclosure

Acting Director

Distribution:

Bernice Christensen (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

35615

applied for. Types of top soil and character of subsoil including any impediment to digging should also be described if known.

(3) The approximate irrigable area of each legal subdivision. This may be by map or aerial or by stating in figures the number of irrigable acres in each subdivision.

(4) Applicant must submit a map showing the position and direction of flow in all proposed ditch and lateral irrigation ditches or pipes on the land.

(5) The topographical features of the irrigable portions of each of the legal subdivisions applied for. (This is preferably shown by use of elevation contours)

It is evident that appellant failed to make the proper showing as to the character of the land which is and of itself was a proper basis for the rejection of the application. See 43 CFR 1054 ed. 224.14(b).

After careful consideration of all of the evidence in the record it is concluded that the Manager committed no error by rejecting the desert land application and his decision of February 15, 1956 is hereby affirmed.

Service Christensen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See specimen form 1842. In taking an appeal there must be strict compliance with the regulations.

Enclosure

Mining Director

Distribution:

Bernice Christensen (Certified Mail)
Lemma State Office (2)
Appeals Unit
CEO

In reply refer to:

Los Angeles 0101015
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Joseph John Natale	:	Desert Land Application

Decision of the Manager Affirmed

Joseph John Natale has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California, dated January 30, 1956, which rejected his desert land application Los Angeles 0101015 in part because the soils consist of excessively heavy clays which are highly charged with alkali salts rendering the lands unsuitable for irrigated crop production.

Appellant alleges on appeal that he visited the area a few months ago and found alfalfa and cotton being grown on nearby lands with good success and that farmers in the area advised him that they have sufficient water to meet their needs and any alkali present is not enough to have any adverse effect on plant growth.

The subject lands were found to be unsuitable for desert land entry as a result of various area examinations which revealed that the only known source of water available for the irrigation of the public lands in the area is underground water derived from the underflow and leakage of the Mojave River, which drains the area; that on the basis of geological evidence and information obtained as a result of the study of the many wells which have been drilled in the Mojave and Harper Valleys, underground water is available only to those portions of the valley that are directly influenced by the river; that beneficial use of that water is now being made by lands already under irrigation; that the present use of the underground water in the Mojave Valley already exceeds the long-time annual inflow available for beneficial use in the whole drainage area; and that any further agricultural development which would require further additional use of underground water would result in an overdraft of the replenishable water supply within the Mojave Basin.

Moreover, the record indicates that the soils on the lands are excessively heavy clays that are highly charged with alkali salts which have very slow sub-surface drainage. The topographical map covering the lands, "Opal Mountain Quadrangle", prepared by the United States Geological Survey in 1955, shows that the major part of the lands lies in a low depression which outlines the boundaries of the valley floor adjacent to Harper Lake. Therefore, surface drainage is also very slow. Attempted irrigation of such lands would merely accelerate the rate of alkali accumulation on the subject lands and seepage to the adjoining land area.

The Department has held that a desert land application should be allowed only where it has been determined that there is an adequate water supply available for irrigation, taking into account the demands placed upon the available water supply and the water requirements of other lands being irrigated in the area, Ruby E. Huffman et al., 64 I.D. 57 (1957), and that excessive soil salinity is a proper basis for the rejection of a desert land application. Doris E. Wickman et al., A-27324 (July 13, 1956).

The mere assertions of appellant that cotton and alfalfa is being grown on adjacent lands are not persuasive evidence of error in the classification of the lands involved herein as unsuitable for desert land entry. In the absence of error which appears on the face of the record, appellant must show by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson et al., A-27326, etc. (February 29, 1956).

After careful consideration of the record including representations of appellant there appears to be no reason for altering the classification of the lands as unsuitable for desert land entry and the decision of the Manager is hereby affirmed.

Joseph John Natale is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Suck

Enclosure

DISTRIBUTION:
Mr. Joseph John Natale (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

35615

appeal to Sec
affirmed A-27780 12-8-58

In reply refer to:

Los Angeles 098511, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Charles B. Webster et al	:	Desert Land Applications

Appeals Dismissed

Charles B. Webster and 82 others have appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Los Angeles, California, dated November 27, 1957, which rejected their applications for desert land entry.

The appeals of those applicants listed in Appendix "A" are summarily dismissed (43 CFR 221.98) for the reason that no statement of reasons has been filed in support of the appeals, and the time for filing the statement has expired (43 CFR 221.3).

Statements of reasons in support of the appeals of the applicants listed in Appendix "B" were submitted to the Land Office at Los Angeles, California, but did not reach the office of the Director until February 25, 1958, after the expiration of the 30-day period allowed by the rules of practice. Within the meaning of section 221.3 of the rules of practice, a document required to be filed in the office of the Director but sent to a Land Office, is not deemed to be filed with the office of the Director until such time as the document is actually received in the Director's office. Wilbert Phillips and Fletcher G. Edwards, A-27470 (September 23, 1957). Since in the instant cases the statements of reasons were received in this office more than 30 days after the notices of appeal were filed, these appeals are also subject to summary dismissal, and are hereby dismissed.

The dismissal of an appeal for failure to comply with the above requirements is mandatory. Form 4-1364 which contains the cited regulations is attached.

Each applicant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in attached Form 4-1365. When this decision becomes final the records will be returned to the Land Office Manager through the Assistant to the Bureau's State Supervisor at Los Angeles, California, for appropriate action looking to the return of any moneys that may be due the appellants in connection with the applications.

For the Director

A H Dunn

Attachments 2

DISTRIBUTION:

Each Appellant (Certified Mail)
SO(California)
Asst. to SS(Los Angeles)
LO(Los Angeles)
Each Case File
Permanent File
AU Reading File
MAG

APPENDIX "A"

Serial No. Los Angeles	Name	Appeal Filed
098518	W. L. Cattani	12-27-57
098530	George Aronian	12-26-57
098885	Albert J. Bailey	12-30-57
0100541	Diran Kay Arakelian	12-26-57
0100542	Alvera Arakelian	12-26-57
0101698	William J. Job	12-23-57
0101699	Alma O. Job	12-23-57
0101700	Mary E. Kavanagh	12-27-57
0101701	John L. Kavanagh	12-27-57
0101710	Peter Snyder	12-30-57
0101711	Billy Snyder	12-30-57
0102411	Isabell A. Bettencourt	12-26-57
0102412	Anthony T. Bettencourt	12-26-57
0102413	Robert A. Hildebrand	12-27-57
0102415	Henry J. Escher, Jr.	12-23-57

APPENDIX "B"

Serial No. Los Angeles	Name	Appeal Filed	Statement of Reasons Filed in Land Office
098511	Charles Barclay Webster	12-13-57	1-28-58
098512	Charles B. Webster, Jr.	12-13-57	1-28-58
098513	Marguerite E. Trino	12-26-57	1-21-58
098514	Madeline Trino	12-24-57	1-21-58
098515	Marty B. Bozina	12-23-57	2- 4-58
098516	George L. Naron	12-23-57	1-21-58
098517	Arnold T. Cattani	12-27-57	1-24-58
098520	Mona P. Cook	1- 6-58	1-21-58
098521	Don M. Cook	12-23-57	1-21-58
098522	Beverly Ellen Kovacevich	12-23-57	1-22-58
098523	John J. Kovacevich	12-23-57	1-22-58
098524	Ellen Mary Kovacevich	12-23-57	1-21-58
098525	Mary Ellen Malovich	12-23-57	1-21-58
098526	Charles Malovich	12-23-57	1-21-58
098529	William Mayhew (Hugh) Sill	12-24-57	2- 4-58
098531	Dorothy Wonderly	12-24-57	1-27-58
098534	George W. Goldsmith	12-24-58	1-27-58
098538	Ellyn M. Collins	12-30-57	1-27-58
098539	Eddie G. Collins	12-30-57	1-27-58
098540	James Branas, Sr.	12-24-57	1-23-58
098541	James C. Branas	1- 2-58	1-23-58
098542	Eugene E. Wonderly	12-26-58	1-23-58
098552	Steve Franetovich	12-27-57	2- 4-58

Serial No. Los Angeles	Name	Appeal Filed	Statement of Reasons Filed in Land Office
098553	William H. Brock, Jr.	12-24-58	1-27-58
098555	Jack M. Nicholson	12-24-58	1-21-58
098564	Jack Busch	12-27-57	1-24-58
098567	Josephine M. Wonderly	12-26-58	1-23-58
098568	Alma Busch	12-27-57	1-24-58
098569	Marjorie P. Brothers	12-27-57	1-27-58
098570	Calvin S. Brothers	12-27-57	1-27-58
098572	Genevieve M. Goldsmith(Deceased)	12-24-57	1-27-58
098574	M. C. Wonderly	12-24-57	1-27-58
098579	Ben Sill	12-24-57	2- 4-58
098580	Charles LeRoy Sill	12-24-57	2- 4-58
098581	Frank S. Sill	12-24-57	2- 4-58
098582	Francis M. Sill	12-24-57	2- 4-58
098585	George E. Oefinger	12-26-57	1-24-58
098586	Catherine C. Oefinger	12-26-57	1-24-58
098587	John B. Sill	12-24-57	2- 4-58
098590	James Trino	12-24-57	1-21-58
098765	Leo B. Mazzie	1- 7-58	1-27-58
098766	Lenore Mazzie	1- 7-58	1-27-58
098767	Frank Goldman	12-30-57	1-29-58
098768	Hyla R. Goldman	12-30-57	1-29-58
098772	Grover A. Collins	12-23-57	1-22-58
098879	Wydea M. Haddad	12-26-57	2- 5-58

Serial No. Los Angeles	Name	Appeal Filed	Statement of Reasons Filed in Land Office
098880	Amean G. Haddad	12-26-57	2-5-58
098881	Nazera Haddad	12-26-57	2-5-58
098882	Holline G. Haddad	12-26-57	2-5-58
098883	Abraham A. Haddad	12-26-57	2-5-58
098884	Margaret Haddad Abdun-nur	12-26-57	2-5-58
099740	Nardie Curci	12-26-57	2-3-58
099741	Katherine Graham Curci	12-26-57	2-3-58
099742	Kelly Curci	12-26-57	1-28-58
099743	Helen Elizabeth Curci	12-26-57	1-28-58
099744	Lucy Laura Curci	12-26-57	1-30-58
099745	John Curci	12-26-57	1-30-58
099746	Martha D. Turner	12-26-57	1-30-58
099747	Louis A. Turner	12-26-57	1-30-58
0100068	Arthur L. Hunnicutt	12-27-57	1-29-58
0100069	Ross S. Bagdasarian	12-24-57	1-22-58
0101706	Edna M. Smith	12-23-57	1-21-58
0101707	Ralph Smith, Jr.	12-23-57	1-21-58
0102405	Mariano Robert Lazane	12-30-57	1-28-58
0102406	John G. Giumarra	12-24-57	1-24-58
0102407	Corinne K. Cattani	12-27-57	1-24-58
0102408	Dominick Corsaro	12-24-57	1-24-58
0102409	June A. Reed	12-23-57	1-22-58

35615

In reply refer to:

Los Angeles 0128526 etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 26, 1958

DECISION

Jong Ah Gum et al.	) :)	Desert Land Applications

Decisions of the Manager Reversed; Cases Remanded

Jong Ah Gum and others have appealed to the Director from decisions of the Manager of the Land Office which rejected their desert land applications because of unsuitable soil texture, rough topography and inadequate subsurface drainage.

Appellants urge that the land is suitable for irrigation and most of the appeals are accompanied by affidavits of well drillers, soils and water analysts, and technical reports covering the area which indicate that the land may be irrigable.

The land was examined in conjunction with approximately 300,000 acres of public lands in Chuckawalla Valley, California. As a result of the examination certain areas within the Valley were determined to be suitable for irrigation which are located in close proximity to much of the land involved in the present appeals. The field report is very general with respect to the character of the soils and other features of the land. In Charles C. Bogardus et al., A-27219 (November 23, 1955) involving other land in Chuckawalla Valley, the Department stated that the field report was too general, and that there was insufficient evidence in the record to substantiate a classification of the land as unsuitable for desert land entry.

The record indicates that a sizeable acreage of privately-owned land is interspersed with the public land and that a number of desert land entries have been allowed in Chuckawalla Valley, and adjacent desert areas in the past few years. Therefore, there should be

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1/ The names of applicants, townships and ranges involved, and land office serial number of each case is listed in Appendix "A".

considerable information now available concerning success and failure factors in the development of desert lands to serve as a guide in the analysis of the agricultural potential of the land embraced in the appellants' applications.

It is our view that there is insufficient evidence in the present records to determine the suitability of the land for agricultural development. Accordingly, the decisions of the Manager are hereby reversed and the cases remanded to the Manager through the Bureau's Assistant to the State Supervisor, Los Angeles, California, for reconsideration of the applications after an examination of each specific tract involved, and an evaluation of agricultural potentialties in the area.

Director

Attachment:
(Appendix A)

DISTRIBUTION:
Each person listed in Appendix "A" (Regular Mail)
Hon. Thomas H. Kuchel, United States Senator
Hon. William F. Knowland, United States Senator
Hon. B. F. Sisk, House of Representatives
Hon. Cecil R. King "
Hon. Edgar W. Hiestand "
Hon. James Roosevelt "
Hon. James B. Utt "
Hon. Donald L. Jackson "
Hon. Gordon L. McDonough "
Appeals List No. 1; Lands Staff Officer;
Ass't. to State Supervisor (Los Angeles) w/case records
CFG

APPENDIX "A"

Name	Land Office Serial Number		Description Twp.	Rge.
Jong Ah Gum	Los Angeles	0128526	5 S.	18 E.
Ton S. Wong		0128527		
Violet Tuey Chew		0128528		
Eva Jong		0128529		
Edward W. Jong		0128530		
Rose S. Lee		0128531		
Young Lee		0128532		
David Share Chew		0128534		
Bernard G. Hobbs		0138899	5 S.	16 E.
S. Jocelyn Hobbs		0138900	"	"
Richard Lee Kroft		0140599	6 S.	19 E.
John M. Liebes		0140600		
Sylvia K. Newman		0140601		
Joseph L. Newman		0140602		
Samuel D. Wacht		0140603		
Joe Ann Wacht		0140604		
Heidi Ehmcke		0140605		
Caspar J. Ehmcke		0140606		
Edgar H. Lemon		0140607		
Clifford J. Ely		0140608		
Philip E. Bauer		0140714		
John J. Walsh		0140742		
Emanuel H. Rand		0140743		
Donna M. Adcock		0140764		
Jerry L. Adcock		0140765		
Betty Jean Blair		0140766		
Eldon C. Blair		0140767		
Harold R. Blair		0140964		
Oma D. Blair		0140965		
Joseph Metzinger		0140966		
Raymond L. Speck		0140967		
Norman Wacht		0140970		
Josephine P. Rapp		0142740		
Jerome V. Rapp		0142741		
Anna M. Meunier		0142742		
Ira B. Sandusky		0142808		
Walter H. Clark		0142809		
Claude E. Worley		0142810		
Raymond R. Meunier		0142867		
Charlie Davis		0142927		
David J. Lemieux		0142369	6 S.	18 E.
Walter L. Sedin		0142370		
Helen E. Klimmer		0142371		
Sue Cook McClure Jones		0142372		
Herbert Rex Shaw		0142373		
Raymond S. Fairbanks		0142384		

APPENDIX "A"---Cont'd.

Name	Serial Number	Description Twp.	Description Rge.
Adele May Reynolds	Los Angeles 0142375	6 S.	18 E.
Gordon Rees Weaver	0142376		
Clarence A. Zimmerman	0142380		
Glade M. Porter	0142377		
Willis A. Ruhlow	0142378		
Robert W. Mizera	0142379		
Doris Jean Tasker	0142381		
Edna Mae Young	0142382		
Walter Matthias	0142383		
James H. Ruggles	0142509		
Philip J. Haddad	0142561		
Richard M. Jacobsen	0142598		
Alma Harman	0108631	7 S.	18 E.
John Harman	0108632		
Zeppo Marx	0139586	7 S.	19 E.

35615

In reply refer to:
Sacramento 050148
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Harry M. Daum : Desert Land Application

Decision of the Manager Affirmed

Harry M. Daum has appealed to the Director, Bureau of Land Management from a decision of the Manager of the Land Office, Sacramento, California which rejected his desert land application Sacramento 050148 because the lands were withdrawn for reclamation purposes as a part of the Butte Division of the Klamath Project, California.

The lands were withdrawn for reclamation purposes by withdrawal order of May 22, 1956. Lands so reserved are not subject to entry. Alma Everett Morris, Jr. et al., A-27235 (December 12, 1955).

An application is tantamount to a petition for classification of lands under sec. 7 of the Taylor Grazing Act and vests no rights in the applicant. John R. Ross, et al., A-27259 (March 12, 1956)

It appears that the appellant was advised that the withdrawal is subject to valid existing rights, which is correct. But, as previously indicated, the mere filing of a desert land application does not by itself create a valid existing right. Cf. George J. Propp, 56 I.D. 347 (1938)

Therefore, the decision of the Manager is affirmed.

Harry M. Daum is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Jones

Enclosure

Distribution p. 2

DISTRIBUTION

Mr. Harry M. Daum (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

35615

In reply refer to:

Los Angeles 056461
056487
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 3, 1958

DECISION

Garland A. Smith Helen Smith	: : :	Desert Land Entries

Assistant Manager's Decisions Reversed

The above parties have appealed to the Director, Bureau of Land Management, from decisions of the Assistant Manager, dated March 23 and 26, 1956, rejecting their requests for additional extension of time to file final proof on unperfected desert land entries and canceling the entries. The requests were denied because the entrymen's reasons of unavoidable delay were deemed unacceptable.

The records show that on December 7, 1955, the Manager advised the entrymen that the time for submitting final proof had expired, and allowed them 90 days within which to show cause why the entries should not be canceled for noncompliance with the law. In response to this notice, on March 15, 1956, requests were filed by the entrymen for a two-year extension of time to submit final proof. In their requests the applicants state that they have done everything possible to reclaim and put the lands to productive use and asserts that they have spent approximately $9,000 on both entries. By decisions of March 23 and 26, 1956, the Assistant Manager denied the requests for extensions of time and canceled the entries. It is from these decisions that the entrymen have appealed to the Director.

Appellants contend that they were unable to reclaim the land by irrigation due to circumstances beyond their control; they have to raise the banks before the Imperial Irrigation District will accept their water orders; and they have to install gates at a cost of $1,600. The appellants request an additional two-year extension for filing the final proof, stating that two years will be the time needed to raise the money they need, finish the banks of the canal, level the land, leach it, and produce a crop. The appellants' contentions afford a predicate to further consider the merits of the desert land entries. Since two years have elapsed, a field examination should be made to determine (1) whether the lands are ready to receive water

from the Imperial Irrigation District; (2) the extent of the entrymen's compliance with the desert land laws; and (3) to ascertain from the Imperial Irrigation District whether it considers the entries ready to receive water from it.

Accordingly, the decisions of the Assistant Manager are reversed and the cases remanded to the Manager through the Assistant to the State Supervisor at Los Angeles, California, for further appropriate consideration in the light of the information developed by the field examination.

Edward Woozley
Director

DISTRIBUTION:

Mr. Garland A. Smith (Regular Mail)
Mrs. Helen Smith (Regular Mail)
Hon. Chet Holifield, House of Representatives
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 0141148
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 17, 1958

DECISION

Luther M. Bedwell	:	Desert Land
	:	
	:	

Case Remanded

Luther M. Bedwell has appealed to the Director from a decision of the Manager, dated November 28, 1956, which required the applicant to file within 30 days from service of the decision additional evidence to comply with the requirements of 43 CFR 232.13 and 43 CFR 231.16.

The appellant asserts that the 30-day-period is unreasonable in the circumstances and requested an extension of time. On February 15, 1957, the requested evidence was received in the land office.

The record shows there have been prior entries on the land, which entries have been relinquished or cancelled. Therefore, the Manager should have called for evidence required by 43 CFR 231.18.

Accordingly, the case is remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for further appropriate consideration.

For the Director

A H Dunn

DISTRIBUTION:

Mr. Luther M. Bedwell (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

37405

In reply refer to:

Los Angeles OL41148
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 17, 1958

DECISION

Luther M. Bedwell : Desert Land
:
:

Case Remanded

Luther M. Bedwell has appealed to the Director from a decision of the Manager, dated November 28, 1956, which required the applicant to file within 30 days from service of the decision additional evidence to comply with the requirements of 43 CFR 232.13 and 43 CFR 231.16.

The appellant asserts that the 30-day period is unreasonable in the circumstances and requested an extension of time. On February 15, 1957, the requested evidence was received in the land office.

The record shows there have been prior entries on the land, which entries have been relinquished or cancelled. Therefore, the Manager should have called for evidence required by 43 CFR 231.18.

Accordingly, the case is remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for further appropriate consideration.

For the Director

DISTRIBUTION:

Mr. Luther M. Bedwell (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

appeal to Sec
affirmed A-27815 - 2-13-59

In reply refer to:
Los Angeles 0119955
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C. June 20, 1958

Certified Mail
Return Receipt Requested

DECISION

Lawrence R. Aker : Desert Land Application

Manager's Decision Affirmed

Lawrence R. Aker has appealed from a decision of the Manager, rejecting his application to make entry under the Desert Land Act (43 U.S.C., 1952 ed., sec. 321 et seq.). 1/ The application was rejected for the stated reasons that the land is rough and covered by rock outcroppings and boulders, and is therefore not suitable for agricultural development.

The appellant contends, among other things, that the land is suitable for agriculture and grazing; that as far as can be determined from soil surveys the land does not contain rock outcrops that are in place; and that portions of the land could be used for fairly deep rooted and shallow rooted agricultural crops.

The report of field examination shows that the land is situated on the brush covered and irregular slopes of a hill which bounds the west side of Poway Valley, Poway, California; that a large part of the tract is covered by rock outcroppings, cobbles, and boulders; and that its rough topographic features preclude agricultural use. It thus appears that the land applied for is not of the character contemplated by the Desert Land Act as suitable for agricultural production.

The issue involved is one of proper classification and the appellant has submitted no positive evidence that the adverse classification is erroneous. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as not suitable for desert land entry. The application was properly rejected. Ruby D. Moore et al, 64 I.D. 137 (1957).

1/ The lands applied for are also included in indemnity selection application, Los Angeles 0116561 and private exchange application, Los Angeles 0121765.

The Manager's decision is affirmed.

Mr. Lawrence R. Aker is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeal is taken by Mr. Lawrence R. Aker, then he must serve a copy of all documents on the adverse parties, State Land Commission, Division of Lands, State of California, Sacramento 14, California, and Mr. Laurence W. Foreman, 334½ West 33rd Street, Los Angeles 7, California.

Edward Woolley
Director

Distribution:

Hon. James Roosevelt, House of Representatives
Hon. William F. Knowland, United States Senate
Mr. Lawrence R. Aker (Certified Mail)
Mr. Milton M. Relin (Regular Mail)
State Land Commission, Division of Lands, State of California (Regular Mail)
Lawrence W. Foreman (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

37405

In reply refer to:

Los Angeles 0101616
0100126
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C. June 24, 1958

DECISION

A. Justin Williams Audrey L. Dowdell Appellants	:	Desert Land

Manager's Decisions Reversed

This is an appeal to the Director of the Bureau of Land Management by A. Justin Williams whose desert land entry, Los Angeles 0101616, was allowed on January 8, 1954. The first year annual proof for the entry was received in the Land Office on January 10, 1955, and thereafter, on December 19, 1956, there was filed in the Land Office notice to the effect that Mr. Williams desired to suspend cultivation and improvement operations on his entry pursuant to Public Law 834, 84th Congress (43 U.S.C. 1952 ed., Supp. IV secs. 336a-336b).

Mr. Williams was informed by the Land Office that he could not avail himself of the provisions of the law until his entry was in good standing and by decision of January 15, 1957, Mr. Williams was allowed 60 days in which to submit the second year annual proof for his entry failing in which his entry would be cancelled. From that decision Mr. Williams took this appeal.

Audrey L. Dowdell has also appealed to this office under similar circumstances from the requirement of the Land Office that she submit second year annual proof for her desert land entry, Los Angeles 0100126, after she had also given notice that she wished to avail herself of the provisions of Public Law 834, supra.

It appears that appellants, with others whose desert land entries had been allowed, ceased operations on their entries after the Acting Solicitor's Opinion 62 I.D. 49 (1955) and the Deputy Solicitor's decision, Oma B. Davidson, et al., 63 I.D. 79 (1956) to the effect that desert land entries could not be allowed in the State of Arizona where they would be dependent upon percolating waters. Appellants' entries

were to be dependent on water from wells and they were engaged with others in digging an exploratory well when as they state they were informed by the departmental employees at Sacramento that they "did not have sufficient rights under California law to the ground water to prove a desert land entry from water wells." This Bureau had taken that position in Sidney Lee Smith, Mary F. Kershner, et al., Los Angeles 089305, 087992, etc. (April 2, 1956), but was reversed by the Department; Ruby E. Huffman, et al., 64 I. D. 57 (1957).

Appellants have requested that their cases be suspended pending their attempt to obtain remedial legislation.

In any event, the appellants' entries should not be cancelled at this time for failure to submit their second year annual proof.

The law provides, in part, that:

> " . . . any person who holds a homestead or desert land entry which was allowed and subsisting on March 1, 1956, . . . is hereby granted permission to suspend until March 1, 1959, further operations looking to the cultivation and improvement of the lands: Provided, That such entryman shall forfeit no rights and shall not otherwise be excused from full compliance with the applicable public land laws by reason of such. . . suspension of cultivation and improvement operations: . . ." (43 U.S.C., 1952 ed., Supp. IV, sec. 336a).

Appellants have elected to come under the provisions of this law. By memorandum of November 7, 1956, the Director issued instructions wherein it was indicated that whether an entry be subject to cancellation or was in good standing, the suspension of cultivation and improvement requirements is granted upon filing of notice by the entryman. Cf. Marian Ruth Smith, A-27537 (January 24, 1958).

It is concluded that the appellants have duly qualified to have suspended until March 1, 1959, further operations looking toward the cultivation and improvement of the lands in their entries. The decisions of the Manager in these cases requiring submission of second year annual proof are hereby reversed, and the entries are considered as suspended until the statutory period has elapsed, or until they should give notice that they wish to resume cultivation and improvement of their entries, whichever occurs sooner. Upon termination of the suspension, the Manager will again notify the appellants of the defects in annual proof appearing in the records of their cases and allowing a period of time in which to submit a showing that the required expenditures were made upon the lands within the entries during the periods in question. If the required proofs are not submitted at that time, or if they should be deficient, the entries will be cancelled.

Charles R. Mead
Acting Director

Distribution - page 3

DISTRIBUTION:

Mr. A. Justin Williams
Mrs. Audrey L. Dowdell
Lands Staff Officer
Appeals List No. 1
CCS

37405

In reply refer to:

Los Angeles 0116306
0116307
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1958

Certified Mail
Return Receipt Requested

DECISION

Addie Mae Cope George Franklin Cope	:	Desert Land Applications

Decisions of the Manager Affirmed

Addie Mae Cope and George Franklin Cope have appealed to the Director, Bureau of Land Management, from the decisions of the Manager, Land Office, Los Angeles, California, dated June 20, 1955, requiring them to submit certain additional evidence in connection with their respective applications for desert land entry under the Act of March 3, 1877, as amended (43 U.S.C., 1952 ed., sec. 321 et seq.).

The decisions pointed out that the applications were deficient because they were not accompanied by a plan of irrigation and showing as to the character of the lands sought to be entered as required by Regulation 43 CFR 232.14(a) and (b). However, the Manager advised the applicants that if they submit the required plan of irrigation and showing as to the character of the lands, except water evidence, indicating the feasibility of the project, but there is insufficient information available to make the necessary water showing, they may apply for a special land-use permit to conduct water drilling explorations on the lands sought. The applicants were allowed 30 days from receipt of the Manager's decisions within which to submit the required additional showings and to file application for special land-use permit, or to appeal. They chose to appeal.

Appellants contend they have submitted to the Manager 25 cents per acre and have paid "Desert Guides" $2.00 per acre for locating and surveying the land. They state that they are now advised by the Land Office Manager that they have only a desert land application and must apply for a special land-use permit and that they must not occupy the land without a permit to do so. In their appeal they have asked what they have or do not have and what they must now do.

With respect to filing costs and charges this Bureau does not employ "guides" or "Surveyors" to locate and survey public lands for prospective entrymen. Therefore, the $2.00 per acre charge indicated by the appellants was apparently an arrangement between themselves and private persons offering such services.

As to entry upon the land, the applicant is entitled to possession and use of the land only after the entry is allowed or a lease or permit is issued. The mere filing of an application does not give the applicant the right to occupy or settle upon the land. (43 CFR 296.5, 1954 ed.). Accordingly, if appellants wish to conduct water drilling operations on the lands applied for to determine whether or not an adequate irrigation water supply is available to meet the requirements for entry under the Desert Land Act, they must apply for a special land-use permit to carry out the proposed explorations.

The case records show that the applications are not complete since the appellants have not submitted the required showings. The applicable regulation, 43 CFR 232.14, 1954 ed., provides in material part as follows:

> "(a) At the time of filing the application with the manager the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i.e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs,***. If the irrigation is proposed by means of artesian wells or by pumping from nonartesian underground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or nearby lands.
> (b) With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and ***that it can be irrigated from the proposed system. The map required*** must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed."

With respect to evidence of water rights, Regulation 43 CFR 232.13 provides in material part, as follows:

"No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all the irrigable portion of the land sought, or that he has initiated and prosecuted, as for as then possible, appropriate steps looking to the acquisition of such a right.****."

In view of the foregoing requirements of the cited regulations, the Manager had no alternative but to either reject the applications or to suspend action on them and call upon the applicants to make the required showings. The decisions of the Manager were correct and are hereby affirmed.

Appellants are allowed 30 days from receipt of this decision to file with the Manager of the Land Office, Los Angeles, California, a plan of irrigation and showing concerning the character of the land sought as enumerated under the applicable regulation [43 CFR 232.14 (a) and (b)] and evidence of water right in accordance with 43 CFR 232.13. If the showing under 43 CFR 232.14 (a) and (b) reveals the existence of nearby irrigation wells or other evidence of water supply sufficient to establish plausible presumptive evidence of a satisfactory water supply to reclaim the land sought the entry may be allowed provided the land can be otherwise properly classified as suitable for irrigated crop production. In the event the appellants are unable to furnish satisfactory evidence of an adequate irrigation water supply they are at liberty to file application for a special land-use permit, within the 30-day period allowed, to enable them to enter upon the land to explore for ground water.

Addie Mae and George Franklin Cope are allowed the right of appeal to the Secretary of the Interior from this decision. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application included in the appeal. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the

rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. (See Information Sheet attached).

Charles P. Mead
Acting Director

Attachment

DISTRIBUTION:

Mrs. Addie Mae Cope (Certified Mail)

Mr. George Franklin Cope (Certified Mail)

Lands Staff Officer

Each case file

Appeals List No. 1

CFG

37405

In reply refer to:

Los Angeles 0126846
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Flora M. Cox	:	Desert Land Application

Acting Manager's Decision Affirmed

Flora M. Cox has appealed to the Director from a decision of the Acting Manager, dated August 22, 1956, rejecting her desert land application. This action was predicated upon a classification of the land as not suitable for agricultural development because of the poor quality of the soils and the unsuitability of ground water for agricultural or domestic use.

The lands lie on rocky, dissected alluvial slopes of a desert valley joining at the southeastern portion of Chuckawalla Valley, in the northeast part of Imperial County, California. The soil varies from gravelly sand in the wash areas to gravelly sandy clay loam on the alluvial slopes. The greater part of the land applied for is covered by desert pavements, considered unsuitable for cultivation due to the extremely gravelly textured and rock covered condition of the soil. In areas of these desert pavements the land is practically devoid of native vegetation. The quality of the ground water, which can be reached at relatively shallow depths, is poor and unsuitable for agricultural or domestic use.

The appellant's statement of reasons for her appeal has been carefully considered. It provides no basis for changing the classification of the land as not suitable for agricultural development. The application was properly rejected. Doris E. Wickman et al., A-27324 (July 13, 1956).

Therefore, the decision of the Acting Manager is affirmed.

Mrs. Flora M. Cox is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR,

Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dwon

Enclosure

DISTRIBUTION:

Mrs. Flora M. Cox (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

37405

In reply refer to:

Los Angeles 087496
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 26, 1958

DECISION

Charles P. Hale	:	Desert Land Entry
	:	
	:	

Manager's Decision Reversed

Charles P. Hale has appealed to the Director, from a decision of the Manager, dated December 23, 1957, rejecting his final proof in connection with his desert land entry, Los Angeles 087496.

Mr. Hale submitted final proof on March 22, 1955. On the same day the purchase money was paid and a receipt issued. Action to accept or reject the proof was not taken until December 23, 1957.

Section 7 of the act of March 3, 1891 (43 U.S.C., sec. 1165) provides, in part that:

> "* * *after the lapse of two years from the date of the issuance of the register's receipt upon the final entry of any tract of land under the * * * desert land * * * laws * * * and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him * * *."

In view of the fact that more than two years have elapsed from the date of issuance of the final receipt and the date action was taken on the final proof, and since there is no indication in the record of any pending contests or protests against the validity of the entry, it appears that Mr. Hale is entitled to receive patent to the land entered. Cf. Stockley v. United States, 260 U.S. 532 (1922).

Accordingly, the Manager's decision is reversed and the case record is remanded to the Manager through the Bureau's Assistant to the State Supervisor, at Los Angeles for further appropriate action.

For the Director:

A. H. Jenn

DISTRIBUTION:
SO(California) w/case record Los Angeles 087496
Mr. Charles P. Hale (Regular Mail)
Appeals List No. 1
Land Staff Officer
EVJ
37405

In reply refer to:
Los Angeles 0104863
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 26, 1958

DECISION

Umberto Sarno	:	Desert Land Entry

Case Remanded

Umberto Sarno has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California of April 19, 1957 which held his desert land entry Los Angeles 0104863 for cancellation because he had failed to file annual proof.

The entry was allowed May 20, 1954. On February 12, 1957 the entryman filed notice that he intends to suspend cultivation and improvement operations in accordance with the provisions of Public Law 834 (Act of July 30, 1956; 70 Stat. 715, 43 U.S.C., 1952 ed., Supp IV, sec. 336a). The statement was not filed on the approved Form No. 4-1331 (Nov. 1956) but substantially meets the requirements of effective notice.

The filing of a proper application for a suspension under the above act suspends a subsisting entry and, necessarily, action thereon. The above act permits one holding a desert land entry subsisting on March 1, 1956, to suspend until March 1, 1959, cultivation and improvement operations on the land upon compliance with other provisions of the act. It is immaterial whether an entry is in good standing or subject to cancellation at the particular time an application is filed to obtain the privileges of suspension granted by the Act. See Marian Ruth Smith, A-27537, (January 24, 1958).

The appellant's entry is therefore suspended until March 1, 1959, or until 90 days after he gives notice that he wishes to resume cultivation and improvement of the land, whichever is earlier.

Accordingly, the Manager's decision of April 19, 1957 is hereby reversed and the case record is returned to the Manager through the Bureau's Assistant to the State Supervisor, Los Angeles, California.

For the Director:

A. H. Jura

Enclosure

Distribution:

Calbro, Calbro & Calbro, Attorneys at Law (Regular Mail)
Mr. Umberto Sarno (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

37405

In reply refer to:
Los Angeles 0123881
0123949
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Ellen A. MaGouirk	:	Desert Land Application
Orvel Scott Green	:	

Appeal Dismissed

Ellen A. MaGouirk has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California issued March 26, 1957, which rejected her desert land application Los Angeles 0123881.

The Manager's decision of March 26, 1957, provided for the right of appeal to the Director, Bureau of Land Management stating that full compliance must be made with sections 221.1 to 221.5, inclusive, and other pertinent sections of the rules of practice. 43 CFR, 1956 Supp, Part 221. Orvel Scott Green was named as an adverse party to be served with copies of the appeal documents in the event an appeal was taken.

An affidavit dated April 18, 1957, of Marilyn Harris, states that on April 16, 1957, she mailed a copy of the notice of appeal and request for hearing of Ellen A. MaGouirk to Orvel Scott Green "*** by depositing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the North Hollywood Branch Post Office ***." However, this affidavit does not comply with 43 CFR, 1956 Supp, 221.95.

Sec. 221.4 of the rules of practice requires in part that the appellant must serve a copy of the notice of appeal on the adverse party not later than 15 days after filing the document. The notice of appeal was filed April 18, 1957. However, the return receipt furnished by the appellant shows that the notice of appeal was served on the

adverse party on June 21, 1957. Since the appellant has failed to show that he served a copy of his appeal upon the adverse party within the time and manner required by the Department's rules of practice, the appeal is summarily dismissed under 43 CFR 221.98(b). Cf. E. O. Bishop, et al., 64 I.D. 25 (1957).

Ellen A. MaGouirk is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeal is taken by Ellen A. MaGouirk, then the adverse party to be served is:

Orvel Scott Green
264 West Main
Brawley, California

A. H. Dunn

For the Director:

Attachment

DISTRIBUTION

Lawrence Harris, attorney (Certified Mail)
Ellen A. MaGouirk (Regular Mail)
Orvel Scott Green (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

39080

appeal to Sec dismissed A-27839 1-14-59

In reply refer to:
Los Angeles 0102854 etc.

July 16, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Neva M. Bellman et al. 1/	:	Desert Land Application

Decisions of the Manager Affirmed

Neva M. Bellman and the other applicants listed in Appendix "A", attached, have appealed from decisions of the Manager which rejected their applications because irrigation development of the land is not practical because the depth to ground water exceeds the depth at which it is economically feasible to pump water for the production of irrigated crops in the area and because disposal of the land would interfere with livestock operations.

Appellants allege in substance that the Manager's decision is based upon evidence taken from small, shallow wells in the area none of which has been drilled to sufficient depth to contact the large volume of water existing at a 350 foot level.

Field reports indicate that well drilling, equipment, and land clearing costs alone would exceed $200.00 per acre without consideration for the construction of windbreaks, fencing, building construction, or other [illegible] costs. The reports state further that any ground water available for irrigation would be at depths of 350 or more feet. Field studies indicate that about 200 feet is the maximum depth from which water can be economically pumped for the production of field crops common to the region. In Elizabeth Bullard et al. A-27242, (December 28, 1955), involving relatively a similar pump lift and similar climatic circumstances affecting irrigated crop production, the Department stated that the ground water level exceeded the depth from which it is considered practically feasible to pump water for irrigation.

The issue is one of the proper classification of the land and the appellant has made no persuasive showing that the classification of the land as unsuitable for desert land entry is erroneous. Mary Refugio Jackson, et al. A-27236 etc. (February 29, 1956).

1/ The applications are listed by name of applicant, section in which located, and land office serial number, on Appendix "A".

Moreover, the applications could not be properly allowed even though the lands were determined to be suitable for irrigation as a review of the case records shows that they do not conform to the requirements of 43 CFR, 1954 ed., 232.14. An applicant must submit with his desert land application plausible presumptive evidence that an adequate ground water supply is available for the production of irrigated crops on all of irrigable portions of the land. Cf. Ezra M. Carter, Harry Fogliatti, A-26165 (October 5, 1951). Neither are the applications accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the irrigation development of the land is either practical or feasible as required by 43 CFR, 1954 ed., 232.14(a). Cf. Roy N. Brown A-25935 (November 16, 1950). The applications were subject to rejection for these reasons alone.

Therefore, the decisions of the Manager are affirmed.

Neva M. Bellman and the other applicants listed on Appendix "A", attached, are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See Form 4-1365 attached. If an appeal is taken there must be strict compliance with the regulations.

For the Director

John B. Piccolo

Attachments (2)

DISTRIBUTION:

Each appellant (Certified Mail)
Land Staff Officer (1)
Appeals List No. 1
CFG

Appendix "A"

Name	T.	R.	Sec.	Land Office Serial No. (Los Angeles)
Mrs. Neva M. Bellman	16N.	12E.	4	0102854
Mr. Vernon A. Bellman	16N.	12E.	4	0102855
Mrs. Mervane E. Beck Watson (formerly Mrs. Mervane E. Beck)	17N.	11E.	23	0102856
Mr. Guy R. Olsen	17N.	11E.	13	0102931
Mrs. Marjorie K. Olsen	17N.	11E.	13	0102932
Mrs. Mary D. Williams	17N.	11E.	24	0102945
Mr. William E. Church	17N.	11E.	25	0102946
Mr. Howard F. Garity	17N.	12E.	30	0102929
Mrs. Louise W. Church	17N.	12E.	17	0102939

Appendix "A"

Name	Land Office Serial No.	Sec.	R.	T.
(Los Angeles)				
Mrs. Eva M. Williams	010285	1	12W.	10N.
Mr. Vernon A. Williams	010285	1	12W.	10N.
Mrs. Harvath E. Cook Nelson (formerly Mrs. Hurvana R. Nash)	010292	23	11W.	17N.
Mr. Guy F. Olsen	010292	13	11W.	17N.
Mrs. Marjorie K. Olsen	010292	13	11W.	17N.
Mrs. Mary D. Williams	010295	23	11W.	17N.
Mr. William B. Oberon	010296	25	11W.	17N.
Mr. Howard F. Gurney	010292	30	12W.	17N.
Mrs. Louise W. Oberon	010292	17	12W.	17N.

In reply refer to:

Sacramento 045877
5.04g

July 18, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Orval T. Stoy	:	Desert Land Application

Manager's Decision Affirmed

Orval T. Stoy has appealed to the Director from a decision of the Manager, rejecting his application for the stated reasons of insufficient ground water for reclamation purposes and soils deficient in nitrogen and organic matter.

The question in issue is one of proper classification, and the appellant has submitted no positive and substantial evidence that the classification is in error. The record tends to support the findings of the Manager.

The nearest well is at Hallelujah Junction. It is 250' deep with water standing at 160 feet below the surface. This well is only for domestic purposes and pumps 60 gallons per hour.

The volume of water available to irrigate land in the area is small, as the water shed area serving these lands is only 12 square miles at the most. At 12.50 inches of annual precipitation, the maximum recharge possible would be 8,000 acre feet for all the land applied for or approximately 5½ feet per acre. The California Department of Natural Resources has made recharge studies in the San Joaquin Valley in which they have found that less than 10 inches of annual precipitation will add no recharge to the water table, while the recharge is negligible for precipitation between 10 and 15 inches. The annual requirements for alfalfa or irrigated pasture is about 7 feet per acre. Therefore, although there may be sufficient underground water for irrigation at present, there would not be enough recharge for sustained irrigation even if all of the precipitation were available.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as not suitable for agricultural development. Andrew T. Johnson et al., A-27305 (September 25, 1957).

Therefore, the decision of the Manager is affirmed.

Mr. Orval T. Stoy is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

The adverse parties to be served in the event of an appeal are:

Edith M. Evans and
Saralegui Land and Livestock Co.
c/o Summerfield and Heward
Counsellors at Law
First National Bank Bldg.
Reno, Nevada

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. Orval T. Stoy (Certified Mail)
Edith M. Evans (Regular Mail)
Saralegui Land and Livestock Co. (Regular Mail)
Summerfield & Heward, Counsellers at Law (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

39080

Appeal to Sec
affirmed A-27818 - 2-17-59

In reply refer to:

Los Angeles 0119042, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 21, 1958

DECISION

Adeeb G. Thomas	:	Desert Land Application

Manager's Decision Affirmed

Adeeb G. Thomas has appealed from a decision of the Manager dated May 17, 1957, rejecting his desert land application for the stated reasons that the area is extremely marginal for agriculture, adjacent patented homesteads are not being farmed, but have been allowed to return to their native vegetative state, and the land is considered more valuable for lease and sale for residence purposes under the Small Tract Act than for the production of agricultural crops, and has been so classified. The record shows that the water table in the area has been dropping and the recharge of the entire area is almost negligible when compared to the amount of water taken out.

Small tract applications have been filed on portions of the land described in desert land application. 1/ On March 6, 1957, the lands in issue, among other lands, were classified in California Small Tract Classification Order 527 as suitable for sale for residence purposes as provided by the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a). This classification was published as a matter of public record in the Federal Register. (22F.R. 1682-1683). The classification order provided that the lands classified were segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof. (43 CFR, 1956 Supp., 257.3 (b)).

1/ Conflicting Small Tract Applications:

Leo Louis Edmondson	Los Angeles 0147566
Sandra Jean Wilson	0147567
Manuel Raymond Vidal	0147991
Frederick Lee Chapman	0147993
Louis E. Alvarez, Jr.	0147994
John Webster Chapman	0147995
Eugene Victor McPherson	0147996

The appellant asserts that he has spent over $1,000 for surveys, topography maps, grading plans, water and soil tests, and suggests that if the desert land application is not allowed, the government should reimburse him for these expenses. The land office files forwarded to this office do not disclose that such data were ever received, except for a map of survey.

The appellant's allegation that he has spent considerable sums of money on land survey, grading plans, soil and water tests, etc., even if substantiated, would not entitle him to a preferential right to the desired land, or vest any right in him to reimbursement. Cf. Georgia J. Hanson, A-26490 (December 10, 1952) The issue involved is one of proper classification and the appellant has not shown by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson, et al., A-27236, (February 29, 1956).

The Department has held that a rejection of a desert land application is proper where the land is more valuable for development under the Small Tract Act. Abraham Feller et al., A-26947 (October 13, 1954). The doctrine enunciated in the Feller case is consistent with the present Departmental policy. Even if the land in issue were determined to be suitable for agricultural development, small tract development is a higher use of the land.

Accordingly, the decision of the Manager is affirmed.

Mr. Thomas is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Thomas, then the adverse parties to be served are:

Leo Edmondson, 3030 Ave. H-6 East, Lancaster, Calif.
Sandra J. Wilson, 3030 Ave. H-8 East, Lancaster, Calif.
Eugene V. McPherson, 1260 S. Arroyo Blvd., Pasadena 2, Calif.
John W. Chapman, 5720 - 8th Ave., Los Angeles 43, Calif.
L. E. Alvarez, Jr., 4620 Rodeo Rd., Los Angeles, Calif.
Frederick L. Chapman, 3511 Cloverdale, Los Angeles, Calif.
Manuel R. Vidal, 4245 S. Van Buren Place, Los Angeles 37, Calif.

Earl J. Lomax
Acting Director

Enclosure

DISTRIBUTION:

Mr. Adeeb G. Thomas, (Certified Mail)
Leo Edmondson, (Regular Mail)
Sandra J. Wilson, (Regular Mail)
Eugene V. McPherson, (Regular Mail)
John W. Chapman, (Regular Mail)
L. E. Alvarez, Jr., (Regular Mail)
Frederick L. Chapman (Regular Mail)
Manuel R. Vidal, (Regular Mail)
Sen. William Knowland
Sen. Thomas H. Kuchel
Cong. H. Allen Smith
Lands Staff Officer
Appeals List No. 1
EVJ

39080

In reply refer to:
Los Angeles 0122062 etc.
0122197 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 24, 1958

Certified Mail
Return Receipt Requested

DECISION

George W. Monahan et al. 1/	:	Small Tract Applications
Willie Elmo Matthews 2/ Frances J. Clark Herman Blackman	:	Desert Land Applications

Cases Remanded

George W. Monahan and 73 other small tract applicants listed on Appendices A and B, attached, have appealed to the Director from decisions of the Manager which rejected their small tract applications because the land had been classified as suitable for disposal under the Desert Land Act.

As a result of field examination of the lands, it had been concluded that the lands involved in the present appeals together with certain other lands in Johnson Valley might possess sufficient agricultural potential to qualify for disposal under the agricultural land laws. It was on the basis of that record that the lands were classified as suitable for desert land entry.

However, it is also clear from the record that there is an intense demand for public lands in the area for small tract purposes. Contour maps reveal that the topography of the land is favorable for small tract development and the record indicates that ground water is of satisfactory quality for culinary purposes and is available in amounts required for sanitation and other purposes. The Department has held in other cases in this same general area that public lands in such circumstances are more properly classified for disposal under the Small Tract Act. Laura L. Strickland, A-26937 (August 18, 1954).

1/ The names of the applicants, addresses of applicants, area of each section in which the various tracts are located, and the serial numbers of the respective applications involved are listed in Appendices A and B.

2/ The desert land application of Willie Elmo Matthews covers the S½ Sec. 1; the application of Frances J. Clark covers the N½ Sec. 1; and the application of Herman Blackman covers the E½SW¼, SE¼ Sec. 2, all in T. 3 N., R. 3 E., S.B.M., California

Because of the intense demand for small tracts in Southern California and other types of conflicting applications for the same lands in the area, the Department has enunciated a land disposal policy for that area. The disposal program outlined by the policy contemplates in applicable portion that small tract development will be considered a higher use and given preference over agricultural development in the classification of lands.

After careful consideration of the circumstances in these cases it is our opinion that the lands are primarily suitable for small tract purposes. Therefore, the decisions of the Manager are hereby reversed and the lands are classified for disposal under the Small Tract Act and the desert land applications of Willie Elmo Matthews, Los Angeles 098510; Frances J. Clark, Los Angeles 094860; and Herman Blackman, Los Angeles 0106162 are hereby rejected. 3/

Willie Elmo Matthews, Frances J. Clark, and Herman Blackman are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there must be strict compliance with the regulations.

If an appeal is taken, each appellant must serve a copy of all documents on the adverse parties. An adverse party in this case would be any person whose application covers land also included in the application of the appellant. The names, addresses, and the legal subdivisions involved in the conflicting small tract applications are outlined on Appendices A and B.

Karl J. Thomas

Acting Director

Enclosure

3/ The appellants listed in Appendix B have failed to show that they have served the adverse parties as required by the rules of practice. Though certain of the appellants have submitted affidavits of mailing, this does not constitute proper proof of service, 43 CFR 221.95(b), 1957 Supp. In the event they did fail to serve the adverse party, they have lost their rights under their respective applications. However, when this decision becomes final and the cases are remanded to the Manager, they should be afforded the opportunity to show that they did serve timely notice of appeal on the adverse party as required by the regulations (Della Lee Halloran, A-27433 (January 31, 1957)) and have thus preserved their rights. The parties affected by adverse determinations of the Manager in this matter shall be afforded a right of appeal to this office.

DISTRIBUTION:
Hon. Harry R. Sheppard, House of Representatives
Hon. William F. Knowland, United States Senate
Hon. James E. Murray, United States Senate
Hon. Thomas H. Kuchel, United States Senate
Hon. Patrick J. Hillings, House of Representatives
Hon. James B. Utt, House of Representatives
Hon. Cecil R. King, House of Representatives
Hon. Edgar W. Hiestand, House of Representatives
Hon. Hubert B. Scudder, House of Representatives
Hon. J. Arthur Younger, House of Representatives
Mr. Henry Himmelfarb, Attorney for Frances J. Clark (Certified Mail)
Miss Frances J. Clark (Regular Mail)
Mr. Willie Elmo Matthews (Certified Mail)
Mr. Herman Blackman (Certified Mail)
Each small tract applicant listed in Appendices A and B (Regular Mail)
Mr. Edward E. Everly, Attorney (Regular Mail)
Mr. Jacob N. Wasserman, Attorney (Regular Mail
Appeals List No. 1
Lands Staff Officer (1)
CFG

Appendix "A"

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. George W. Monahan,	10320 Grevillae Avenue Inglewood, California	3N	3E	2	S½	0122062
Mr. Albert A. Thompson,	c/o Bernard Weinstein 602 Arizona Land Title Bldg. Tucson, Arizona	3N	3E	1	S½	0122184
Mr. Samuel G. Collier,	26606-14 & W. Street Highland, California	3N	3E	1	N½	0122166
Mrs. Ilarue V. Stuart,	756-20th Street San Bernardino, California	3N	3E	2	S½	0121617
Mr. Vergil M. Johnson,	1803 Fremontia Drive San Bernardino, California	3N	3E	2	S½	0121624
Mr. William H. Wilson,	747-20th Street San Bernardino, California	3N	3E	2	S½	0121625
Mr. Kenneth C. Gavitt,	351-E. First Street Rialto, California	3N	3E	2	S½	0121626
Mr. J. D. Wray,	806 Calle Puente San Clemente, California	3N	3E	2	S½	0121627
Mr. Roy D. Linfield,	819 S. Flower Inglewood, California	3N	3E	2	S½	0122063
Mr. Dan L. Linfield,	11017 Freeman Avenue Inglewood, California	3N	3E	2	S½	0122064
Mr. Everett D. Monahan,	11123 Eastwood Avenue Inglewood, California	3N	3E	2	S½	0122065

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
Mr. Steve T. Takahashi,	2959 Somerset Drive Los Angeles 16, California	3N	3E	2	S½	Los Angeles 0122089
Mr. John M. Yakura,	21711 So. Vera Street Torrence, California	3N	3E	2	S½	0122090
Mr. Willard H. Wright,	169 E. South Street Rialto, California	3N	3E	2	S½	0122396
Mr. Kiyoshi Fujimoto,	3950 Montclair Street, #4 Los Angeles 18, California	3N	3E	2	S½	0122992
Mr. George R. Reagan,	1458 West 110th Street Los Angeles 47, California	3N	3E	2	S½	0123328
Mr. Joseph I. Reagan,	536 E. 120th Street Hawthorne, California	3N	3E	2	S½	0123329
Mr. Samuel W. Goodwin,	3213 Malcolm Avenue Los Angeles 34, California	3N	3E	2	S½	0123433
Mr. Arthur G. Olson,	940 Enterprise Avenue Inglewood 3, California	3N	3E	2	S½	0123469
Mr. Ralph K. Kauffman,	12255 Sunnybrook Lane Whittier, California	3N	3E	2	S½	0123457
Mrs. Walter E. Timberlake, Jr.,	1528 Orange Avenue Costa Mesa, California	3N	3E	2	S½	0123596
Mr. Lawrence Priddy, Jr.,	1210 Bay Laurel Drive Menlo Park, California	3N	3E	2	S½	0123812

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. Richard E. Miller,	11732 Steele Drive Garden Grove, California	3N	3E	2	S½	0123813
Mr. Jens L. Rasmussen,	904 W. Third Street Pomona, California	3N	3E	2	S½	0123818
Mr. Samuel A. Cornish,	812 Roberts Street Fort Atkinson, Wisconsin	3N	3E	2	S½	0123957
Mr. Robert C. Hudson,	34002 Malaga Drive Post Office Box 331 Dana Point, California	3N	3E	2	S½	0123970
Mr. Vern O. Estes,	141 S. Harwood Street Orange, California	3N	3E	2	S½	0124142
Mr. LeRoy V. Floberg, Sr.,	3317 N. Muscatel So. San Gabriel, California	3N	3E	2	S½	0124395
Mr. David F. Green,	2424 El Paseo Alhambra, California	3N	3E	2	S½	0124400
Mr. Don D. VanZandt,	6058 N. Golden West Temple City, California	3N	3E	2	S½	0124401

Appendix "B"

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mrs. Laura L. Gorham,	Post Office Box 100 Joshua Tree, California	3N	3E	1	S½	0121530
Mr. Leonard C. Brose,	915 Ford Street Burbank, California	3N	3E	1	S½	0122197
Mr. James R. Burkes,	933 Unruh Avenue La Puente, California	3N	3E	1	S½	0122198
Mr. George G. Giddens,	7902 Glencal Street Huntington Beach, California	3N	3E	1	S½	0122208
Mr. Ralph F. Stewart,	915 Ford Street Burbank, California	3N	3E	1	S½	0122252
Mr. Earl S. Bolin,	Route 2 Box 233 Mulberry, Arkansas	3N	3E	1	S½	0122367
Mr. Leward V. Thompson,	12931 Hamlin Street No. Hollywood, California	3N	3E	1	S½	0122446
Mr. Robert L. Thompson,	7243 Farmdale Avenue No. Hollywood, California	3N	3E	1	S½	0122447
Mr. Lorence D. Dodson,	12329 Burton Street No. Hollywood, California	3N	3E	1	S½	0122448
Mr. William A. Fox,	929 E. 3rd Street San Bernardino, California	3N	3E	1	N½	0122169
Mr. Frank D. Volock,	845 Sylvan Boulevard Redlands, California	3N	3E	1	N½	0122377

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. William W. Nimmo,	309 Division Redlands, California	3N	3E	1	N½	0122932
Mr. Charles Volock,	845 Sylvan Boulevard Redlands, California	3N	3E	1	N½	0123013
Mr. William H. Scheid,	2734 Serrano Road San Bernardino, California	3N	3E	1	N½	0123288
Mr. John Viera,	5320 Allan Street Los Angeles 32, California	3N	3E	1	N½	0124555
Mr. Hugo Bieberdorf,	125 E. Jefferson Pomona, California	3N	3E	1	N½	0124661
Mr. Jesus C. Ignacio,	6618 Bonsallo Avenue Los Angeles 47, California	3N	3E	1	N½	0124715
Mr. Juan S. Santos,	205 E. Gage Avenue Los Angeles 3, California	3N	3E	1	N½	0124716
Mr. Edward Bieberdorf,	Route 1 Box 87 Del Mar, California	3N	3E	1	N½	0124717
Mr. Frank Falsetta,	7174 Adwen Street Downey, California	3N	3E	1	N½	0124726
Mr. Carl W. Bieberdorf,	Route 1 Box 87 Del Mar, California	3N	3E	1	N½	0124765

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
Mr. Roy H. Hoffman, Sr.,	8423 Eglise Avenue Rivera, California	3N	3E	1	N½	Los Angeles 0124855
Mr. Eddie B. Collins,	11913 Laurel Avenue Whittier, California	3N	3E	1	N½	0124859
Mr. Roy H. Hoffman, Jr.,	8423 Eglise Avenue Rivera, California	3N	3E	1	N½	0124862
Mr. Albert L. Steinhouse,	435 Millard Court Pasadena 3, California	3N	3E	1	N½	0124863
Mr. William T. Adams,	8692 N. Ventura Avenue Casitas Springs, California	3N	3E	1	N½	0124935
Mr. William Adams,	8692 N. Ventura Avenue Casitas Springs, California	3N	3E	1	N½	0124989
Mr. William P. Bauer,	9801 Wheatland Avenue Sunland, California	3N	3E	1	N½	0124990
Mr. Herman S. Podeszwa,	11743 Emery Street El Monte, California	3N	3E	1	N½	0125001
Mr. Paul B. Wallace,	727 W. 95th Street Inglewood, California	3N	3E	1	N½	0125020
Mr. Miles H. Nabors,	11800 Volunteer Norwalk, California	3N	3E	1	N½	0125125
Mr. Samuel R. Sauer,	14715 Jalisco Road La Mirada, California	3N	3E	1	N½	0125126

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. Calvin R. Wagher,	369 Wisconsin Avenue Long Beach 14, California	3N	3E	1	N½	0125129
Mr. James T. Cole,	14715 Jalisco Road La Mirada, California	3N	3E	1	N½	0125134
Mr. Robert E. Freeman, Jr.,	448 N. Sunflower, Covina, California	3N	3E	1	N½	0125139
Mr. Samuel E. Morse,	17018 Berendo Avenue Gardena, California	3N	3E	1	N½	0125444
Mr. Sidney F. Henderson,	3634 Senarac Long Beach, California	3N	3E	1	N½	0125587
Miss Virginia Winship,	6347 Arbutus Avenue Huntington Park, California	3N	3E	1	N½	0125750
Mr. Austin B. Peeples,	1421 23rd Street Santa Monica, California	3N	3E	1	N½	0132995
Mr. Ronald R. Sliter,	525 W. Baseline San Bernardino, California	3N	3E	2	S½	0121623
Mr. Gustaf A. Anderson,	4537 N. Livia Avenue Rosemead, California	3N	3E	2	S½	0123468
Mrs. May M. Pettengill,	409 "G" Street, P. O. Box 385, Eureka, California	3N	3E	2	S½	0123814
Mr. Bert Pettengill,	Post Office Box 385, 409 "G" Street, Eureka, California	3N	3E	2	S½	0124193
Mr. George Fujita,	1936 Stoner Avenue Los Angeles 25, California	3N	3E	2	S½	0124336

80

In reply refer to:

Los Angeles 0142008
0142009
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 6, 1958

Certified Mail
Return Receipt Requested

DECISION

Walter E. Draper, Sr. Walter E. Draper, Jr.	:	Desert Land

Manager's Decisions Affirmed

Walter E. Draper, Sr., and Walter E. Draper, Jr., have appealed to the Director of the Bureau of Land Management from decisions of the Manager, Land Office, Los Angeles, California, dated July 25, 1956, rejecting their desert land applications for lands lying within sec. 6, T. 10 S., R. 14 E., S.B.M., California. The decisions recited that: (1) the land was withdrawn from all forms of entry by Letter "H" of April 9, 1909; (2) land was withdrawn by 04684, Imperial Irrigation District, approved February 26, 1921; and (3) first form withdrawal for Colorado River Project, June 10, 1950, withdrew the lands. 1/

The appeals are based upon the grounds that according to information given to the appellants, the present withdrawal orders will be "cancelled out", such action resulting in a removal of the grounds given for rejection.

The official records of the Bureau show the land was withdrawn by a first form withdrawal of April 2, 1909; The letter "H" of April 9, 1909, being the letter by which the Land Office was advised to note its records of such a withdrawal.

The applications in issue were filed in the Land Office on June 8, 1956. The withdrawal of April 2, 1909, was revoked on August 24, 1956, and publication of this order #66015 was made in the Federal Register of August 30, 1956, 21 F.R. 6548. 2/However, since the withdrawal was in effect at the time the appellants filed their applications, the applications were fatally defective. See Elmer U. Wright, A-26975 (September 27, 1954).

1/ Neither the tractbook nor the Colorado River Project file shows a first form withdrawal on June 10, 1950. The last withdrawal was on June 4, 1930.
2/ That order revoked also the withdrawals of October 19, 1920, and June 4, 1930.

Among the requisites for land to be subject to entry under the desert land laws are those requiring the land to be unreserved and unappropriated. See 43 CFR, 1954 ed., 232.3(a).

The Department has held that land included in a first form withdrawal is not subject to entry until the withdrawal is revoked and an application for entry upon such land will be rejected. Frank Noriega, A-26916, (August 3, 1954). Cf. Bill Fults, 61 I.D. 437 (1954).

The Department has held that an application for withdrawn lands may not be held in suspense until restoration of the land to entry or disposal and then considered as if filed the instant the land is restored. Effie Ellen Cox, A-27175 (December 12, 1955).

Accordingly, the decisions of the Manager are affirmed.

This decision is without prejudice to the right of the appellants to file new applications for the land in issue in accordance with applicable laws and regulations and subject to intervening rights.

Walter E. Draper, Sr., and Walter E. Draper, Jr., are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application on which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Walter E. Draper, Sr. (Certified Mail)
Mr. Walter E. Draper, Jr. (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JLR

40658

In reply refer to:
Los Angeles 080969
081315
081508
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 6, 1958

Certified Mail
Return Receipt Requested

DECISION

Earl Telford DeWolf James C. DeWolf Clyde P. Lamkin	:	Desert Land Applications

Decisions of the Manager Affirmed

Earl Telford DeWolf, James C. DeWolf, and Clyde P. Lamkin have appealed from decisions of the Manager which rejected their desert land applications because of the poor quality of the soils on the land and because there is no known source of water supply for irrigation.

The records show that most of the land * embraced in Mr. Lamkin's application is mountainous and rough in topography and therefore unsuitable for desert land entry. Topographical maps of the area confirm that conclusion. Field reports also state that there is no water available for the irrigation of the land. The Department has held that an application for desert land entry in such circumstances is properly rejected. Ruby D. Moore et al., 64 I.D. 137 (1957). With respect to the other two applications, the records show that the land is located $1\frac{1}{2}$ to 3 miles north from Barstow, California, is readily accessible over an improved road, and that the land is primarily valuable for small tract purposes and suitable for disposal under the provisions of the Small Tract Act. In Arthur J. Manley, A-26822, (August 6, 1954) which also involved land located on the outskirts of the community of Barstow, the Department held that the desert land application was properly rejected

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* The record indicates that the land in Mr. Lamkin's application is valuable for locatable minerals. If such is the case, the land is not subject to disposal under the agricultural public land laws. 30 U.S.C. sec. 21. A placer mining claim for sand and gravel, owned by Robert W. Waterman, Box 15, Dagget, California, embraces the $W\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$ sec. 19, T. 10 N., R. 1 W., S.B.M., California. There are numerous other mining claims located in the north half of that section.

and that the conflicting small tract applications should be allowed. Moreover, the action of the Manager in this case is consistent with the current Departmental policy concerning the classification and disposal of public lands in Southern California.

The issue here is one of the proper classification of the land and the appellants have furnished no persuasive evidence to show that the classification is in error. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Moreover, even if the lands applied for were suitable for agricultural development, the desert land applications are not accompanied by any plausible presumptive evidence that water in amounts required for irrigation may be available. Ezra M. Carter, Harry Fogliatti, A-26165 etc. (October 5, 1951). Nor have the appellants submitted adequate plans of irrigation to demonstrate that the land is practically feasible of irrigation development. 43 CFR, 1954 ed., 232.14(a). Nor are the applications accompanied by an appropriate showing as to the character of the land itself as required by the regulation in 43 CFR, 1954 ed., 232.14(b). The applications are subject to rejection for these reasons alone. Therefore, the decisions of the Manager are affirmed.

Messrs. Earl Telford DeWolf, James C. DeWolf, and Clyde P. Lamkin are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See Form 4-1365 attached. In taking an appeal there must be strict compliance with the regulations.

If Mr. Lamkin files an appeal, the adverse party to be served is: Robert W. Waterman, Box 15, Dagget, California.

Edward Woozley
Director

Attachment

DISTRIBUTION:
Mr. Earl Telford DeWolf (Certified Mail)
Mr. James C. DeWolf (Certified Mail)
Mr. Clyde P. Lamkin (Certified Mail)
Mr. Herbert C. Schultze, Attorney (Certified Mail)
Hon. Thomas H. Kuchel, United States Senate
Lands Staff Officer
Appeals List No. 1
CFG

40658

In reply refer to:
Los Angeles 0140285
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 7, 1958

DECISION

Floyd W. Thomas : Desert Land

Manager's Decision Reversed, Case Remanded

Floyd W. Thomas has appealed from a decision of the Manager, dated May 17, 1956, rejecting his desert land application, for the stated reason that the " *** area applied for was withdrawn for small tract classification No. 78 *** ".

Examination of small tract classification order No. 78 reveals that the land embraced in the desert land application was not included in the classification order. Therefore the rejection of the application on that ground was erroneous.

However, the application is defective because it is not accompanied by plausible presumptive evidence that an adequate ground water supply is available for the production of irrigated crops on all of the irrigable portions of the land. Cf. Ezra M. Carter et al., A-26165 etc., (October 5, 1951). Neither is the application accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the irrigation development of the land is either practical or feasible, as required by 43 CFR, 1954 ed., 232.14(a).

After the case has been returned to the Manager, he will afford the appellant an opportunity to furnish the necessary information.

Accordingly, the decision of the Manager is reversed and the case remanded to him through the Bureau's Assistant to the State Supervisor at Los Angeles for further appropriate consideration.

For the Director:
John B. Piccolo

DISTRIBUTION:
Asst. to SS (Los Angeles) w/case record
Mr. Floyd W. Thomas (Regular Mail)
Lands Staff Officer
EVJ

40568

In reply refer to:
Los Angeles 0144628, etc. 1/

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Samuel C. Angelo, et al. : Desert Land Applications

Decisions of the Manager Affirmed
Hearing Denied

Samuel C. Angelo, and 40 others, have appealed to the Director from decisions of the Manager which rejected their applications for the reasons that the lands are more valuable for grazing than for desert land entry and because there is no irrigation water available. The Manager's decision cited Walter E. Scott, A-27293 (June 21, 1956) which rejected 67 desert land applications for lands in Chuckawalla Valley on the grounds of insufficient water for irrigation.

Appellants allege in substance that: (1) The Manager's decision is not consistent with the report of the Bureau's field examiner which concluded that (1) a vast majority of the lands in Chuckawalla Valley is suitable for agriculture; (2) The decision in Walter E. Scott, supra, which reinstated Mr. Scott's grazing lease was not supported by proper evidence of the suitability of the lands for irrigation; (3) subsequent reports indicate the lands are suitable for agricultural purposes providing water is available; (4) reports furnished to the Bureau conclusively demonstrate that sufficient ground water is available for irrigation; (5) the Pallidini fruit growers and others have profitably produced irrigated crops in Chuckawalla Valley; and (6) attorneys for the California Water Rights Board have advised the Director that desert land applicants have a right under California law to underground waters over which they have filed an application.

The appellants also allege that there are 6 to 8 producing wells in other parts of the valley. Certain of the appeals also contain a letter of a representative of the State Engineer's Office to the Continental Engineering Company that there were producing water wells in sections 5, 8, 24 and 36, T. 5 S., R. 16 E., in 1956 and that there is a good possibility of obtaining water in T. 7 S., R. 18 E.

1/ The names of applicants; sections, townships, and ranges involved; and the respective land office serial numbers in each case are listed on Appendix "A".

Field reports indicate that a considerable acreage of the land in the valley might be reclaimed if water for irrigation was available. However, the most reliable estimate available indicates that the annual rate of recharge to the underlying water table does not exceed 6,000 acre feet. This is considered to be an adequate water supply for the irrigation of about 1,280 acres. Moreover, the record indicates further that Chuckawalla Valley is not an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the valley and drains into the Colorado River.

The report points out that some 28,000 acres of land, designated as area "A" on the field report have soils suitable for agricultural development, provided there is adequate water available, and that about 36,000 additional acres, designated as area "B", are likewise suitable for agriculture if sufficient ground water is found to be available after the requirements of area "A" have been satisfied. The remaining lands consist of old lake beds, rough, rocky, hilly areas or lands otherwise unsuitable for agricultural purposes. 2/

Due to the apparent limitation on water supplies available for irrigation and the extensive acreage of public lands that could be irrigated if water was available, the classification provides for the allowance of agricultural entries on the most productive soil sites within the drainage basin. Therefore, applications for the poorer quality lands must be rejected although they might possess some agricultural potential. This is consistent with action taken by the Department in Joe B. Forehand et al., A-26693, etc. (December 9, 1954) as well as the more recent decision in Andrew T. Johnson et al., A-27305 (September 25, 1957).

Though the total amount of water considered to be available for irrigation in Chuckawalla Valley is not an absolute measurement but is based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including representations of the appellants in the present appeals, that there is sufficient water for the irrigation of more than 1,280 acres of lands in Chuckawalla Valley on a continuing basis.

2/ All of the lands involved in the present appeals lie outside the boundaries of the area designated as "A" in the field report and the major part of the applications are located outside area "B". On the basis of 5 acre feet per acre irrigated, area "A" would require a total of 140,000 acre feet of water and area "B" would require a water supply in excess of 320,000 acre feet whereas the record indicates 6,000 acre feet or less are available.

The fact that certain officials of the State have advised that entrymen have a right to underlying ground waters is not persuasive evidence of error in the classification. The Department has held in numerous cases that unless an actual water supply is available for the irrigation of the lands that they cannot be properly classified as suitable for desert land entry. Ruby E. Huffman et al., 64 I.D. 57, 69 (1957). In Walter E. Scott, supra. involving lands in Chuckawalla Valley the decision stated that there is nothing in the record to indicate that water is available for the irrigation of the lands.

As to Public Land Order No. 1274, cited by the appellants, that order restored certain lands from the Joshua Tree National Monument which had been established by proclamation No. 2193 of August 10, 1936. Certain of the lands involved are located within Chuckawalla Valley. The order did not classify the lands, but opened them to application under the agricultural and other public land laws. Paragraph 4 of the order states that the lands will not be subject to disposition until classified and that any application filed will be considered on its merits.

Though some of the applications contain references to [illegible] wells in the area and describe the character of the lands sought, none of the applications are accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by any practical means. Cf. Roy N. Brown, A-25934 (November 16, 1950). Such a plan must show the location of the proposed well or wells, the size of the proposed well, the anticipated depth to water and the volume of output, along with the source of power for the pump, and the size and distribution of canals, flumes, diversion boxes, and other installations and equipment necessary to distribute the water to all of the irrigable parts of each legal subdivision under application as well as a summary estimate of investment costs. Since the adequacy of the irrigation system depends upon the water requirements of crops to be grown, the plan must indicate the types of crops that will ordinarily be produced and include an estimate of the normal seasonal water requirements for the production of such crops. The applications are subject to rejection for this reason alone. 43 CFR, 1954 ed., 232.14(b).

The appellant's request for a hearing is denied, since there is no reasonable likelihood that it would develop facts decisive of the issues. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957).

After careful consideration of all of the evidence in the record it is concluded that the decisions of the Manager are correct and they are affirmed.

Samuel C. Angelo and the other 40 appellants listed on Appendix "A" attached are allowed the right of appeal to the

Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See Form 4-1365 enclosed. If an appeal is taken there must be strict compliance with the regulations.

If an appeal is taken by any of the desert land applicants involved herein then the adverse party to be served with notice is:

Walter E. Scott, Box 283, Blythe, California

Kent D. Thomas

Acting Director

Enclosure

DISTRIBUTION:

Hon. T. H. Kuchel
Hon. E. W. Hiestand
Hon. H. Allen Smith, House of Representatives
Each Desert Land applicant listed on Appendix "A" (Certified Mail)
Mr. William Blair Dalbey (Certified Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

Appendix "A"

Name	L.O. Serial No. (Los Angeles)
Mr. Samuel C. Angelo	0144628
Mr. John A. Kepler	0144692
Mr. Johnny E. Johnson	0145032
Mrs. Hannah Schafler	0151974
Mr. Abraham Schafler	0151975
Mr. Henry J. Walch	0152002
Mr. Robert Walch	0152003
Mr. Paul F. Hupman	0152004
Mr. Jack G. Kulka	0152005
Mrs. Helen B. Kulka	0152006
Mr. Sam Indicks	0152007
Miss Sarah Indicks	0152008
Mr. Earl P. Elson	0152059
Mrs. Louise D. Waters	0152067
Mr. Arthur H. Greene	0152068
Mrs. Ruth Magnes	0152070
Mr. Sidney S. Dicker	0152071
Mrs. Marian Decker	0152072
Mrs. Florence Decker	0152073
Mr. Herbert M. Owen	0152074
Mr. Henry Flaster	0152077
Mr. Max Hellman	0152078
Mr. Sam Becker	0152079

Appendix "A" (Cont'd)

Name	L.O. Serial No. (Los Angeles)
Mrs. Rosemary S. Sedin	0152082
Mrs. Tillie Talmadge	0152142
Mr. Sam Gold	0152167
Mr. Norman L. Schafler	0152168
Mrs. Abbie Holland	0152169
Mrs. Ilene M. Rakisits	0152180
Miss Mildred F. Rakisits	0152181
Mr. Julius C. Rakisits	0152223
Mr. Arnold E. Kinsler	0152274
Mr. Israel Dreier	0152275
Mr. Edward Lemke	0152278
Mr. John F. Curran	0152353
Mr. Robert S. Rocke, M. D.	0152433
Mr. Maurice Rapkin	0152434
Mr. Douglas M. Cranston	0152556
Mr. Sam Bambaras	0152572
Mr. John E. Goldsborough	0152573
Mr. Charles C. Goldsborough	0152620

40658

In reply refer to:
Los Angeles 0106161
0106163
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 22, 1958

Certified Mail
Return Receipt Requested

DECISION

Bertha Blackman :
: Desert Land Applications
Seymour Sobel :

Decisions of the Manager Affirmed
Hearing Denied

Bertha Blackman and Seymour Sobel have appealed from decisions of the Manager which rejected their desert land applications because of the coarse, unfertile character of the soils and the uncertain ground water conditions in Johnson Valley.

Field reports show that the major soil type is "Hesparia Sandy Loam" interspersed with deposits of loose gravel and rock. These soils are coarse to medium textured, gritty, sandy loams that have a very loose, porous structure. They are very shallow as they merge with the subsoil at a depth of from 5 to 10 inches from the surface and are very marginal for irrigated crop production. Moreover, it is very doubtful if water is available in amounts required for the irrigation of more than a few acres of the land under application. Of ten or more wells in Johnson Valley, only one was being used for irrigation in 1956. This well is located on Sec. 19, T. 4 N., R. 4 E. It produces about 43 inches of water which enables the operator to irrigate 35 to 40 acres of land by using a storage reservoir system with it which he fills either before or between irrigations. The owner reports an expenditure of over $600 per acre reclaimed.

A well drilled into the bed of Melville Dry Lake produces water which contains toxic materials that precludes its use for irrigation. A number of dry holes at various locations in the valley have been abandoned after drilling to depths of 250 to 550 feet. A hydrological Engineer of the U. S. Geological Survey advised field personnel of this Bureau that there is insufficient ground water in Johnson Valley for agricultural purposes due to the small watershed and the low annual precipitation within the drainage and that extensive pumping would lead to the total depletion of the ground water.

Moreover, the Department has enunciated a land disposal policy for certain areas in Southern California including Johnson Valley by which policy all of the vacant public land which is suitable for disposal under the Small Tract

Act will be so classified except possibly for those lands included in allowable state exchange and indemnity applications. The record shows that the lands are under application by the State of California pursuant to state indemnity selection application Los Angeles 0124199. The Department has held in previous cases that applications for desert land entry are properly rejected where there is substantial evidence that the land is not suitable for the sustained cultivation of crops, there is considerable doubt that reclaiming the land is feasible, and that other disposition of the land appears to be in the public interest. Helen C. Smith et al., A-26968 etc. (March 4, 1955).

The records also show that the land in issue is affected by 155 small tract applications, evincing an intense small tract interest in the land.

Furthermore, the applicants did not furnish with their desert land applications any plausible presumptive showing that ground water is available in amounts required for the irrigation of all of the land under application. Cf. Ezra M. Carter, Harry Fogliatti, A-26165 etc. (October 5, 1951). Neither were the applications accompanied by plans of irrigation in sufficient detail to demonstrate with any reasonable assurance that the reclamation of the land by irrigation is either practical or feasible. Nor have the appellants made any persuasive showing that the land itself is of such character that it is susceptible of crop production by irrigation as required by the regulation in 43 CFR 1954 ed., 232.14. The applications are subject to rejection for these reasons alone.

The appellant's request for a hearing is denied, since there is no reasonable likelihood that a hearing would develop facts decisive of the issues. Cf. Margaret A. Andrews et al., 64 I.D. 9(1957).

The primary issues in these cases is that of the proper classification of the land and the appellants have made no persuasive showing that the adverse classification is in error. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). Therefore, the decisions of the Manager are hereby affirmed.

Bertha Blackman and Seymour Sobel are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served with notice thereof is the State Lands Commission, Division of State Lands, State of California, 1403 12th Street, Sacramento 14, California.

For the Director:

A H Zinn

Attachment

Distribution on page 3

DISTRIBUTION:

Mr. Henry Himmelfarb, Attorney for appellants (Certified Mail)
Mrs. Bertha Blackman (Regular Mail)
Mr. Seymour Sobel (Regular Mail)
State Lands Commission, State of California (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

40658

In reply refer to:

Los Angeles 0104864
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 28, 1958

DECISION

Phyllis Ruggio : Desert Land Entry
:
:

Case Suspended

Phyllis Ruggio has appealed from a decision of the Manager, dated September 20, 1957, which held her desert land entry for cancellation, for failure to comply with the requirements of the desert land law for the filing of annual proof.

On February 12, 1957, the appellant had filed a request for suspension under the act of July 30, 1956, 43 U.S.C., 1952 ed., Supp. V, secs. 336a - 336d.

The Act of July 30, 1956, supra, permits a person holding a desert land entry which was allowed and subsisting on March 1, 1956, to suspend until March 1, 1959, cultivation and improvement operations on the entered land, upon compliance with other provisions of the act, and the statutory life of the entry will be extended to the extent of the period of suspension. The entryman is required among other things to file a notice of intention to suspend such operations, with information as to the location and extent of present cultivation or improvements placed on the entry. It is immaterial whether an entry is in good standing or subject to cancellation at the time a notice of intention is filed to obtain the benefit of suspension granted by the act. Marian Ruth Smith, A-27537 (January 24, 1958).

Requests for leave of absence under the act of July 30, 1956, supra, filed in conformity with the statute, must be allowed where entries were "subsisting on March 1, 1956" as provided by the act. However, a grant of a leave of absence does not excuse lack of compliance with the desert land law and regulation during the period prior to the grant. If the entries are subject to cancellation for defects which cannot be remedied under the laws existing prior to the passage of the relief act, the grant of a leave of absence will not remedy such defects and the entries will remain subject to cancellation. An entry is a subsisting entry despite the fact that it is subject to cancellation for failure to submit annual proof. Eugene Bellos, et ano. Idaho 04851, et ano. (June 2, 1958)

Accordingly, it is concluded that the appellant has duly qualified to have suspended until March 1, 1959, further operations looking toward the cultivation and improvement of the land in her entry. The decision of the Manager requiring submission of annual proof is hereby reversed, and the entry is considered as suspended until the statutory period has elapsed, or until she should give notice that she wishes to resume cultivation and improvement of her entry, whichever occurs sooner. Upon termination of the suspension, the Manager will again notify the appellant of the defects in annual proof appearing in the records of her case and allow a period of time in which to submit a showing that the required expenditures were made upon the lands within the entry during the periods in question. If the required proofs are not submitted at that time, or if they should be deficient, the entry will be cancelled.

For the Director:

A. H. Zuver

DISTRIBUTION:

Mr. Anthony J. Calabro, Attorney at Law (Regular Mail)
Mrs. Phyllis Ruggio (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

40658

In reply refer to:
Los Angeles 0103966
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Enos J. Pimentel : Desert Land Application

Decision of the Manager Affirmed

Enos J. Pimentel has appealed from a decision of the Manager which rejected his desert land application because of the poor quality of the soils and adverse topographical conditions.

The record shows that the lands are located in Mesquite Valley, California. The soils on the lands are heavy clays, unsuitable for irrigated crop production. The record also indicates that the annual rate of recharge to underground water supplies in the Valley is about 1,630 acre feet which is an adequate water supply for the irrigation of approximately 400 acres of land in the climatic region involved. It shows further that there are approximately 540 acres of lands having class 1 soils and 6,100 acres of lands having class II soils. These Class I and class II soils are described in the field report as loams to fine sandy loams; whereas the lands in issue are classified as class III lands which have heavy clay, poorly drained soils that are unsuitable for irrigated crop production in any circumstances.

Due to the limitation on water supplies available for irrigation and the extensive acreage of better quality lands that could be irrigated if water was available, the classification provides for the allowance of agricultural entries on only the most productive soil sites. This is consistent with Joe B. Forehand et al., A-26693, etc. (December 9, 1954) as well as the more recent decision in Andrew T. Johnson, et al., A-27305 (September 25, 1957).

Since the soils on the lands are of inferior quality for irrigated crop production, the desert land application could not be properly allowed. Cf. Ruby D. Moore et al., 64 I. D. 137 (1957). Though the total amount of water considered to be available for irrigation in Mesquite Valley is not an absolute measurement but is based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including representations of the appellants in the present

appeals, that there is sufficient water for the irrigation of more than about 400 acres of lands in Mesquite Valley. Cf. Andrew T. Johnson, supra.

Moreover, the application could not be properly allowed even though the lands were determined to be suitable for irrigation as a review of the record shows that it does not conform to the requirements of 43 CFR, 1954 ed., 232.14. An applicant must submit with his desert land application plausible presumptive evidence that an adequate ground water supply is available for the production of irrigated crops on all of the irrigable portions of the land. Cf. Ezra N. Carter et al., A-26165 (October 5, 1951). Neither is the application accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the irrigation development of the land is either practicable or feasible. Cf. Roy N. Brown, A-25935 (November 16, 1950). The application is subject to rejection for these reasons alone. The decision of the Manager is affirmed.

Enos J. Pimentel is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Trow

Enclosure

Distribution:

Mr. Enos J. Pimentel (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

40658

In reply refer to:
Los Angeles 0129040
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Charlie M. Nelson : Desert Land Application

Decision of the Manager Affirmed

Charlie M. Nelson has appealed from a decision of the Manager which rejected his desert land application for the stated reasons that it would be necessary to pump water from a depth of 290 or more feet and because there is an insufficient, replenishable, ground water available for the irrigation of the land.

The field classification report states that there is insufficient ground water for irrigation and that any large scale withdrawal of the existing water supplies would cause eventual depletion of the underground water in the area. Therefore, a desert land application could not be properly allowed. Joe B. Forehand, et al., A-26693 etc. (December 9, 1954). It also states that the depth to ground water is 300 or more feet and exceeds the depth from which it is practically feasible to pump water for the irrigation of crops adaptable to the area. Cf. Elizabeth Bullard et al., A-27242 (December 28, 1955).

Moreover, the desert land application is not accompanied by any plausible presumptive evidence that water in amounts required for irrigation is available nor did the applicant furnish with his application an adequate plan of irrigation to demonstrate that the development of the land for irrigation is either practical or feasible as required by the regulation in 43 CFR, 1954 ed., 232.14. The application is subject to rejection for this reason alone.

The basic issue in this case is one of proper classification, and the appellant has submitted no positive evidence that the classification is in error. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The decision of the Manager is hereby affirmed.

Charlie M. Nelson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G.H. Dunn

Enclosure

Distribution:
Mr. Charlie M. Nelson (Certified Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

appeal to Sec.
affirmed A-27890 4-27-59

In reply refer to:
Los Angeles 0132655
0132788
0134902
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Horace H. Neely	:	Desert Land Applications
Norma J. Neely	:	Special Land Use Permit Application

Decision of Acting Manager Affirmed
Requests for Hearing Denied

Horace H. and Norma J. Neely have appealed from a decision of the Acting Manager which rejected their desert land applications and application for special land-use permit, Los Angeles 0134902, for the stated reason that there is no ground water available at depths from which it is feasible to pump for irrigation.

The record shows that the lands are located in the Harper Valley area of the Mojave River Drainage. The lands lie outside the "zone of influence" of the underground basin fed by run off from the Mojave River. The only water available for irrigation in the area is the underground water derived from the underflow and leakage of the Mojave River, which drains the area. Geological evidence and information obtained as a result of the study of the many wells which have been drilled in the Mojave and Harper Valleys indicate that water is available only to those portions of the valley that are directly influenced by the Mojave River. Beneficial use of available water supplies is now being made by lands already under irrigation and the present use of the underground water already exceeds the long-time annual inflow available for beneficial use in the whole drainage area. Any further agricultural development would require further additional use of underground water which would result in an overdraft of the replenishable water supply within the Mojave Basin.

The Department has held that a desert land application should be allowed only where it has been determined that there is an adequate water supply available for irrigation, taking into account the demands placed upon the available water supply and the water requirements of other lands being irrigated in the area William E. Gelder, A-27084 (April 12, 1955), or where it appears that the allowance of desert

land entries would not aggravate an already serious water situation. Joe B. Forehand et al., A-26693 etc. (December 9, 1954). By a decision issued September 25, 1957, the Department decided that desert land applications for lands lying outside the "zone of influence" of the underground basin of the Mojave River, as are the lands in issue, were properly rejected. Andrew T. Johnson et al., A-27305 (September 25, 1957).

Though the total amount of water available for irrigation in the Mojave Drainage Basin is not an absolute measurement but based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including representations of appellants, that there is an adequate water supply for the irrigation of the lands sought on a continuing basis.

Moreover, the applications could not be properly allowed even though it was determined that an adequate water supply is available as the applicants did not file with their desert land applications any plausible presumptive evidence that water is available for the irrigation of the lands, or a plan of irrigation in sufficient detail to reasonably demonstrate that the irrigation development of the lands is feasible by any practical means. Cf. Roy N. Brown, A-25935 (November 16, 1950). Neither is there any showing that the lands are of a character susceptible of irrigation. The applications are subject to rejection for these reasons alone, 43 CFR, 1954 ed., 232.14.

As to the application for special land-use permit, Los Angeles 0134902, the Department has held that a special land use permit may be issued, at the discretion of the Secretary to allow a desert land applicant to go upon the lands to determine whether or not water is available for irrigation. Jack B. Aldridge et al., A-27520 etc. (March 12, 1958). Such procedure is not applicable to the instant case since the record shows there is no excess ground water available for the irrigation of the lands. Therefore, the application for special land use permit was properly rejected.

The issue in these cases is that of the proper classification of the lands and the appellants have not shown that the adverse classification is in error. Cf. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956).

Appellants' requests for hearing are denied as there is no reasonable likelihood that it would develop facts decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957).

Horace H. and Norma J. Neely are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Jurr

Enclosure

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney for Appellants (Certified Mail)
Mr. Horace H. Neely (Regular Mail)
Mrs. Norma J. Neely (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

40658

In reply refer to:

Los Angeles 0130655
0136672
0131493
0136669
0135337
0135338
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 29, 1958

Certified Mail
Return Receipt Requested

DECISION

Wing Woo	:	Desert Land Applications
Edward Woo	:	Special Land Use Permit Applications
John B. Sain	:	

Decisions of the Acting Manager and Manager Affirmed

Wing Woo, Edward Woo and John B. Sain have appealed from decisions of the Acting Manager and Manager which rejected their desert land applications and special land use permit applications to explore for water, for the stated reason that the soils are unsuitable for irrigation.

Field reports and topographical maps indicate that the lands are rough in topography. The record also shows that the lands lie outside the "zone of influence" of the underground water basin of the Mojave River drainage. The Mojave River is the only known source of water supply available for irrigation. Geological evidence obtained as a result of the study of many wells in the Mojave and Harper Valleys indicate that water is available only to those portions of the Valley that are directly influenced by the river, that beneficial use of that water is now being made by lands already under irrigation, that the present use of the underground water in the valley already exceeds the long time annual inflow available for beneficial use in the whole drainage area, and that any further agricultural development which would require further additional use of the ground water would result in an overdraft of the replenishable water supply within the Mojave basin. Moreover, reports reveal that the lands lie at an elevation of approximately 2,500 feet and 500 feet above the level of the Harper Lake bed which is the lowest point in Harper Valley and records of wells indicate that water is not available at depths from which it is feasible to pump irrigate.

The Department has held that a desert land application should be allowed only where it has been determined that there is an adequate water supply available for irrigation, taking into account the demands placed upon the available water supply and the water requirements of other lands being irrigated in the area William E. Gelder, A-27084 (April 12, 1955), or where it does not appear that the allowance of desert land entries would aggravate an already serious water situation. Joe B. Forehand et al., A-26693 etc. (December 9, 1954). By a decision issued September 25, 1957, the Department decided that desert land applications for lands lying outside the "zone of influence" of the underground basin of the Mojave River, as are the lands in issue, were properly rejected. Andrew T. Johnson et al., A-27305 (September 25, 1957). The Department has also held that a desert land application is properly rejected where it appears that the probable depths to water exceed the depth to which it is economical to pump water and where all available water in the area should be considered obligated by lands having an economic pump lift. Elizabeth Bullard et al., A-27242 (December 28, 1955).

Furthermore, the applications could not be properly allowed even though the lands were determined to be suitable for irrigation as they are not accompanied by an appropriate showing as required by the regulation in 43 CFR, 1954 ed., 232.14. A desert land application must be accompanied by plausible presumptive evidence that water is available for the irrigation of the land, Cf. Ezra N. Carter et al., A-26165, etc. (October 5, 1951), and a plan of irrigation in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation. Cf. Roy N. Brown, A-25935 (November 16, 1950). Nor have there been made appropriate showings that the land is of a character suitable for irrigation development.

As to the applications for special land use permits, the Department has held that a special land use permit may be issued at the discretion of the Secretary to permit a desert land applicant to go upon the lands to determine whether or not water is available for irrigation. Jack B. Aldridge, A-27250, etc. (March 12, 1958). Such procedure is not applicable to the instant case since the record reveals there is no excess ground water available for the irrigation of additional lands in the drainage area and the depth to ground water, if available, exceeds the depth from which it is practicably feasible to pump irrigate for the irrigation of crops in the area.

The issue is one of proper classification of the land and the appellants have not shown that the adverse classification is in error. Cf. Mary Refugio Jackson, A-27326 (February 29, 1956). Therefore, the decisions of the Manager are affirmed.

Wing Woo and Edward Woo and John B. Sain are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Zinn

Enclosure

Distribution:
Mr. John B. Sain (Certified Mail)
Mr. Wing Woo (Certified Mail)
Mr. Edward Woo (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

appeal to Sec
affirmed A-27889 - 4-23-59

In reply refer to:
Los Angeles 098532 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 29, 1958

Certified Mail
Return Receipt Requested

DECISION

Mrs. W. Wallace Hogle et al.	:	Desert Land Applications

Decisions of the Manager Affirmed

Mrs. WaiWallace Hogle and seven others, all listed in Appendix "A", attached, have appealed from decisions of the Manager which rejected their desert land applications for the stated reasons that there is insufficient ground water available for irrigation and the soils on parts of the lands are unsuitable for agricultural purposes.

The lands are located in Chemehuevi Valley, California. Field reports indicate that 26,000 acres of public lands in the valley might be irrigated if sufficient water was available. However, Chemehuevi Valley is not an enclosed drainage basin but drains freely into the Colorado River. There appears to be no significant accumulation of underground water in the drainage. Based upon the maximum area of recharge, a mean annual precipitation of 6 inches, and the normal increment of recharge to the ground water table for such areas, the annual rate of replenishment does not exceed about 3,000 acre feet. Moreover, long time precipitation records shows that the annual precipitation is far less than 6 inches in many seasons and was no more than 0.31 inches in 1954. Such an amount would contribute about 150 acre feet of water to the entire ground water basin within the valley and assuming it could be recovered at a single point the 150 acre feet would be sufficient water for the irrigation of about 20 acres which would be insufficient water for the irrigation of even one 40-acre subdivision under desert land application.

In view of the foregoing determination, field personnel have concluded that there is only enough water in Chemehuevi Valley for domestic and livestock purposes.

There are a few wells in the Valley which are used primarily for livestock water, however the output of these is small. Though approximately 20,000 acres of deeded lands intermingled with the public lands in the valley might be suitable for irrigation, if sufficient water were available, no portions of these lands have been developed for irrigation.

Appellants allege in substance that (1) there is a natural dam across the lower portion of the valley, (2) the effective water shed area exceeds 400,000 acres, (3) the increment of recharge to the ground water basin approximates five-sixths of the total precipitation, and that the water requirements of crops in the area is four acre feet per acre. On the basis of these data they allege that there is an adequate water supply for the irrigation of 45,000 acres. The foregoing allegations are entirely undocumented except for the reference to Dr. O. E. Meinzer's publication on Hydrology wherein he states that the factor for run off water approximates one-sixth of the total water falling as rain or snow. However, it does not follow therefore as appellant apparently assumes that the other five-sixths enters a ground water aquifer and becomes available for irrigation nor is such a general proposition applicable to a particular area or region as involved herein.

Though the determination as to water supplies by the Bureau's personnel is not an absolute measurement but is based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including the representations of the appellants in the present appeals, that there is sufficient ground water available in Chemehuevi Valley for irrigated crop production on a continuing basis. The issue is one of classification and appellants have not shown that the adverse classification is in error. Mary Refugio Jackson et al., A-27326 (December 29, 1956). The Department has held that unless a showing of a water supply, available for the irrigation of the lands is made, they cannot be properly classified for desert land entry. Cf. Walter E. Scott, A-27293 (June 21, 1956).

Appellants have requested additional time until March 30, 1959 within which to produce factual evidence in support of their appeals. However, the appellants have had ample time within which to submit additional written data in support of their appeals. Moreover, the regulations 43 CFR, 1954 ed., 232.10 and 232.14 require an applicant must be thoroughly familiar with the character of the land and its potentialities for irrigation at the time of the execution of the applications. The request for the extension of time is denied.

After careful consideration of all of the evidence presented for the record, including allegations of appellants, it is concluded that the decisions of the Manager are correct and they are hereby affirmed.

The appellants listed on Appendix A attached are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Attachment

DISTRIBUTION:
Each appellant listed on Appendix A (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

The appellants listed on Appendix A attached are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See amended Form 4-1265. If an appeal is taken they must be strict compliance with the regulations.

For the Director:

Attachment

DISTRIBUTION:
Each appellant listed on Appendix A (Certified Mail)
Lands Court Officer (1)
Appeals List No. 1
CFO

Appendix "A"

Name	Sec.	T.	R.	Land Office Serial No.
Mrs. W. Wallace Hogle	6	5N.	22E.	Los Angeles 098532
Mr. W. Wallace Hogle	6	5N.	22E.	Los Angeles 098533
Mrs. Aurelia A. Westphalinger	34	5N.	21E.	Los Angeles 098536
Mr. Roy S. Westphalinger	34	5N.	21E.	Los Angeles 098537
Mr. Thomas C. Bannon	14,15	4N.	22E.	Los Angeles 098556
Mr. Francis E. Pfister	24	5N.	21E.	Los Angeles 098561
Mr. Joseph M. Ducato	27	6N.	21E.	Los Angeles 098583
Mr. John Garabedian	4	4N.	22E.	Los Angeles 0100538

40658

Appendix "A"

Name	Sec.	T.	R.	Land Office Serial No.
Mrs. W. Wallace Hogle	6	5N.	22E.	Los Angeles 098322
Mr. W. Wallace Hogle	6	5N.	22E.	Los Angeles 098323
Mrs. Amelia A. Westphalinger	34	5N.	21E.	Los Angeles 098326
Mr. Roy S. Westphalinger	34	5N.	21E.	Los Angeles 098327
Mr. Thomas C. Bannon	14,A1	4N.	22E.	Los Angeles 098356
Mr. Francis M. Fitzler	26	5N.	21E.	Los Angeles 098361
Mr. Joseph M. Duesto	27	5N.	21E.	Los Angeles 098383
Mr. John Garabedian	4	4N.	22E.	Los Angeles 010038

In reply refer to:
Los Angeles 0128509
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 3, 1958

Certified Mail
Return Receipt Requested

DECISION

Everett N. Baumgardner	:	Desert Land Application

Decision of the Manager Affirmed

Everett N. Baumgardner appealed from a decision of the Manager which rejected his desert land application for the stated reasons that it would be necessary to pump water from a depth of 290 or more feet and because there is an insufficient, replenishable, ground water available for the irrigation of the land.

The field classification report states that there is insufficient ground water for irrigation and that any large scale withdrawal of the existing water supplies would cause eventual depletion of the underground water in the area. Therefore, a desert land application could not be properly allowed. Joe B. Forehand, et al., A-26693 etc. (December 9, 1954). It also states that the depth to ground water is 300 or more feet and exceeds the depth from which it is practically feasible to pump water for the irrigation of crops adaptable to the area. Cf. Elizabeth Bullard et al., A-27242 (December 28, 1955).

Moreover, the desert land application is not accompanied by any plausible presumptive evidence that water in amounts required for irrigation is available nor did the applicant furnish with his application an adequate plan of irrigation to demonstrate that the development of the land for irrigation is either practical or feasible as required by the regulation in 43 CFR, 1954 ed., 232.14. The application is subject to rejection for this reason alone.

The basic issue in this case is one of proper classification, and the appellant has submitted no positive evidence that the classification is in error. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The decision of the Manager is hereby affirmed.

Everett N. Baumgardner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Enclosure

Distribution:
Mr. Everett N. Baumgardner (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

42059

In reply refer to:

Los Angeles 0130623
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Lewis Linn Dunklin : Desert Land Application

Manager's Decision Affirmed

Lewis Linn Dunklin has appealed from a decision of the Manager rejecting his desert land application because there is no evidence of an adequate supply of irrigation water within economic depths on the land applied for.

The land sought lies in an area located south of the Kramer Hills along U. S. Highway 395, between Adelanto and the junction of U.S. Highway 395 and U.S. Highway 466. The land lies in what is commonly called the "Middle Mojave." The report of field examination discloses (1) that water conditions in the area appear to be of an adverse nature, both as to quantity of water and depth of water; (2) that no record could be found of any well in the area that produced any quantity of water;* and (3) that water conditions appear unfavorable due to the depth of water. The record shows that special land-use permits have been issued for drilling tests wells. One of these wells was reported to have been drilled to a depth of 410 feet without encountering any appreciable amount of water. None of the test wells has been successful.

The appellant contends that there are water wells in the vicinity of the land applied for and that there is plenty of water in the area. He has submitted an article by the Western Mining and Engineering Company, as evidence of the availability of underground water in the Mojave Valley, in which the land in issue is located. However, there is nothing in the appeal or article to show that water for irrigation is available for irrigation of the land sought.

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*The ground water branch of the Geological Survey describes the area as one with very poor possibilities for water development.

The question in issue is one of proper classification and the appellant has submitted no positive evidence that the classification is erroneous. To justify a classification of land as suitable for desert land entry, there must be a showing that water is available to the land for its reclamation. Walter E. Scott, A-27293 (June 21, 1956). Before land may be classified for desert land entry, it must be shown that water is available for the reclamation of the land. Andrew T. Johnson et al., A-27305 (September 25, 1957). On the basis of the evidence in the record, it does not appear that the appellant has overcome the adverse classification, and there is no evidence in the record to show that the classification is erroneous. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Accordingly, the decision of the Manager is affirmed.

Mr. Lewis L. Dunklin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Snow

Enclosure

DISTRIBUTION:

Mr. Lewis Linn Dunklin (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

42059

In reply refer to:
Los Angeles 0143/64
0152222
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1958

Certified Mail
Return Receipt Requested

DECISION

John R. Patcha	:	Desert Land Applications
George D. Klimmer	:	
	:	

Decisions of the Manager Affirmed

John R. Patcha and George D. Klimmer have appealed from decisions of the Manager which rejected their desert land applications for the stated reason that the lands are more suitable for grazing purposes than for desert land entry in view of the unavailability of water for the reclamation of the land.

The lands are located in Chuckawalla Valley, California. Field reports indicate that 28,000 acres designated as area "A" in the field report, have soils suitable for agricultural development, provided there is adequate water available, and that about 36,000 acres designated as area "B" are likewise suitable for agriculture if sufficient water is found to be available after the requirements of area "A" have been satisfied. The remaining lands consist of old lake beds, rough, rocky, hilly areas or lands otherwise unsuitable for agricultural purposes. 1/

Field reports further reveal that the annual rate of recharge to the underlying water table does not exceed 6,000 acre feet. This is considered to be an adequate water supply for the irrigation of about 1,280 acres of land. The record also indicates that Chuckawalla Valley is not an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the valley and drains into the Colorado River.

1/ On the basis of 5 acre feet of water per acre irrigated, area "A" would require a total of 140,000 acre feet of water and area "B" would require an additional 180,000 acre feet per annum. Therefore, applications for lands in addition to areas "A" and "B" would require a water supply in excess of 320,000 acre feet whereas the record indicates that 6,000 acre feet or less are available for irrigation each year.

The lands in the present appeals are located outside the 28,000 acre area designated as area "A" in the field report as well as the 36,000 acre area designated area "B" with the exception of about 80 acres located in the N½NE¼ Sec. 24 T. 7 S., R. 19 E., S.B.M., covered by the application in Los Angeles 0143764.

Though the total amount of water considered to be available for irrigation in Chuckawalla Valley is not an absolute measurement but is based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including the representations of the appellants in the present appeals, that there is sufficient water for the irrigation of more than 1,280 acres of the lands in Chuckawalla Valley on a continuing basis.

The fact that certain officials of the State have advised that entrymen have a right to underlying ground waters is not persuasive evidence of error in the classification. The Department has held in numerous cases that unless an actual water supply is available for the irrigation of the lands that they cannot be properly classified as suitable for desert land entry. Cf. Ruby E. Huffman et al. 64 I.D. 57, 69 (1957). In Walter E. Scott, A-27293 (June 21, 1956) involving lands in Chuckawalla Valley the decision stated there there is nothing in the record to show that water is available in amounts required for irrigation.

As to Public Land Order No. 1274, cited by appellants, that order restored certain lands from the Joshua Tree National Monument which had been established by proclamation No. 2193 of August 10, 1936. Certain of the lands involved are located within Chuckawalla Valley. The order did not classify the lands, but opened them to application under the agricultural and other public land laws. Paragraph 4 of the order states that the lands will not be subject to disposition until classified and that any application filed will be considered on its merits.

Though the applications contain references to wells in the area and describe the character of the lands sought, they are not accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation by any practical means. Cf. Roy N. Brown, A-25935 (November 16, 1950). Such a plan must shows the location of the proposed well or wells, the size of the proposed well, anticipated depth to water, and the volume of output, along with the source of power for the pump, and the size and distribution of canals, flumes, diversion boxes, and other installations and equipment necessary to distribute the water to all of the irrigable parts of each legal subdivision under application as well as a summary estimate of investments costs. Since the adequacy of the irrigation system depends upon the water requirements of crops to be grown, the plan must indicate the types of crops that will ordinarily be produced and include an estimate of the normal seasonal water requirements for the production of such crops. The applications are subject to rejection for this reason alone. 43 CFR, 1954 ed., 232.14(b).

Appellant's request for a hearing is denied, since there is no reasonable likelihood that a hearing would develop facts decisive of the issues. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957).

Therefore, the decisions of the Manager are affirmed.

John R. Patcha and George D. Klimmer are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there must be strict compliance with the regulations.

If an appeal is taken by John R. Patcha or George D. Klimmer the adverse party to be served is: Walter E. Scott, Box 283, Blythe, California.

For the Director:

A. H. Dwon

Enclosure

Distribution:

Mr. William Blair Dalbey, Attorney at Law (Certified Mail)
Mr. John R. Patcha (Regular Mail)
Mr. George D. Klimmer (Regular Mail)
Mr. Walter E. Scott (Regular Mail)
Appeals List No. 1
Lands Staff Officer
CFG

In reply refer to:

Los Angeles 0100289, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Norman Mattis et al	:	Desert Land Entries

Decisions of Manager Affirmed

Norman Mattis and three other desert land entrymen have appealed severally from decisions of the Manager which held for cancellation their desert land entries 1/ for the reason that they failed to make the first annual proof in accordance with the requirements of the desert land law.2/

The case records verify the Manager's holding in each case that the entryman was in default for noncompliance with the statutory and regulatory provisions with respect to the submission of evidence within one year after entry, showing that expenditures were made as required for the purpose of developing the entered lands for irrigation 3/ The appellants were notified by the Manager that the time fixed by statute had expired without the required proof being made and were allowed 60 days to submit such proof. No evidence of compliance having been filed, the entries were subsequently held for cancellation.

The appeals are in effect requests for extensions of time, with explanations by the appellants of their reasons for not having performed the required work on the entries during the first year.

1/ Norman Mattis Los Angeles 0100289
Peggy K. Lefler 0102637
Humbert A. Boezinger 0102638
Ruth C. Boezinger 0102639

2/ Act of March 3, 1877, as amended by the Act of March 3, 1891. 43 U.S.C., 1952 ed., sec. 321 et seq.

3/ and for reclamation and cultivation of the lands, and in permanent improvements, and in the purchase of water rights. 43 U.S.C., 1952 ed., sec. 328; 43 CFR, 1954 ed., 232.19.

The law makes no provision for extensions of time in which to file annual proof; such proof must be submitted by the anniversary date of the entry. Section 5 of the Act of March 3, 1891, provides in pertinent part that if a desert land entryman "shall fail during any year to file the testimony aforesaid (annual proof) the lands shall revert to the United States, * * * and the entry shall be cancelled. * * * ". The language of the act shows its mandatory character and permits of no qualification of its provisions. Durward E. Fry, 45 L.D. 172 (1916).

This decision is without prejudice to the right of the appellants within 30 days from service of notice hereof to file with the Manager requests for suspension of cultivation and improvement requirements in accordance with the act of July 30, 1956 (43 U.S.C., 1952 ed., Supp. IV, secs. 336a-336d). Such requests may be made on form 4-1331 (November 1956) obtainable from the Manager. If such requests are properly made, the entries will be suspended until March 1, 1959, or until the parties request that the suspension be lifted, whichever is earlier.

Requests for leave of absence under Public Law 834 (act of July 30, 1956; 70 Stat. 715), filed in conformity with the statute, must be allowed where entries were "subsisting on March 1, 1956" as provided by the act. However, a grant of a leave of absence does not excuse lack of compliance with the desert land law and regulation during the period prior to the grant. If the entries were subject to cancellation for defects which cannot be remedied under the laws existing prior to the passage of the relief act, the grant of a leave of absence will not remedy such defects and the entries will remain subject to cancellation. Eugene Bellos, et ano, Idaho 04851, et ano. (June 2, 1958)

The Manager's decisions are accordingly affirmed.

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Kuss

Attachment

DISTRIBUTION:
Mr. Norman Mattis (Certified Mail)
Mrs. Peggy Kelso Lefler (Certified Mail)
Mr. Humbert A. Boezinger (Certified Mail)
Mrs. Ruth C. Boezinger (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 0140796
0141140
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 11, 1958

DECISION

Algie Gray Lyerly	:	Desert Land Applications
George Arthur Lang	:	
	:	

Cases Remanded

The above-identified parties have appealed from decisions of the Manager, dated November 28, 1956, which suspended their desert land applications and allowed them 30 days from receipt thereof within which to file certificates from the Imperial Irrigation District showing that water is available for the reclamation of the land and that there are no due and unpaid taxes or assessments against the land (43 CFR 232.13, 231.16) or to appeal.

The parties filed appeals on December 27, and 26, 1956 respectively from the Manager's decision for the stated reason that the 30 days allowed was not sufficient time within which to file the required statements. They contended that the next meeting of the Board of Directors of the Imperial Irrigation District would be held on January 8, 1957, and that it would not be possible for them to comply with the requirements of the decision within the time allowed.

Had the appellants been granted by the Manager an extension of time within which to comply with the requirements of the decisions (the period for appeal, of course, could not be extended 43 CFR 221.2), the appeals in these cases would have been obviated. Cf. Charles Schoenburg, Wilma I. Claverie, A-27434 (June 3, 1957).

The records show that on January 14, 1957, the appellants filed with the Manager the data called for by the decisions of November 28, 1956.

Accordingly, the cases are remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for further appropriate consideration.

Although the appellants have given to J. Edward Kahlow powers of attorney in connection with these cases, ho showing has been made by him that he is authorized to practice before the Department. He will not, therefore, be served with a copy of this decision. Cf. letter to Mr. Kahlow from Assistant Secretary Ernst, dated July 18, 1958.

For the Director:

A. H. Ivor

DISTRIBUTION:

Mr. Algie Grey Lyerly (Regular Mail)
Mr. George Arthur Lang (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

42059

In reply refer to:
Los Angeles 0137898
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Robert Lee Payton	:	Desert Land Application

Manager's Decision Affirmed as Modified

Robert Lee Payton has appealed from a decision of the Manager which rejected his desert land application, filed January 20, 1956, because further allowance of entries in Ivanpah Valley would result in depletion of the underground water supply. The decision also stated that the land was considered more valuable for State indemnity selection than for the production of agricultural crops, and that the land had been so classified.

The land is located in the southerly end of the Ivanpah Valley, San Bernardino County, California. The valley is one of the many intermountain basins with no outlet and its lowest elevation above sea level is approximately 2,620 feet. The climate is arid with an average annual precipitation of about four inches. The soil is a sandy loam with some silt. The valley is a closed basin wholly dependent upon underground water for any agricultural development. The present underground water supply is not sufficient to irrigate all the irrigable land in the valley, and further agricultural development through irrigation will result in depletion of the underground water supply at a more rapid rate than it would be replenished by annual precipitation. The annual recharge to the basin, which is recoverable from wells, is not sufficient for the irrigation of more than 1,500 acres. According to the record, there are now within the Ivanpah Valley more than 1,500 acres in patented land and allowed entries. Therefore, the allowance of additional entries, which would increase the drain on the limited water supply, would invite destruction of all agricultural possibilities within the basin.

Desert land entries in California based on the use of percolating water for the reclamation of the land are allowable only when, in the exercise of the discretion vested in the Secretary of the Interior, it is determined that there is a sufficient supply of percolating water to enable the reclamation of the entries, taking into consideration the rights and needs of other lands for such percolating water. Andrew T. Johnson et al., A-27305 (September 25, 1957). This is because

of the fact that under California law the owners of lands overlying an underground basin have correlative rights to the use of the percolating water in the basin. Each such owner has the right to a proportionate share, with other overlying owners of private lands, of such percolating water as he can put to a reasonable beneficial use on his overlying land. Only that portion of percolating water surplus to the needs, present and prospective, of overlying private landowners in a basin may be appropriated. As desert land entries may not be allowed unless it can be shown that the applicants have rights to the use of sufficient water to reclaim the land, such entries may not be allowed in the Ivanpah Valley unless it is shown that there is a supply of groundwater in the valley basin surplus to the needs of the owners of the patented lands. See Ruby D. Moore et al., 64 I.D 137 (1957). Therefore, the appellant's application was properly rejected.

The record shows that the land in issue, except an 80-acre tract, was classified on September 27, 1955, as suitable for disposal under a prior State indemnity selection application, Los Angeles 098202, filed on November 6, 1952. As a general rule, the first application filed for the classification of land is entitled to prior consideration over subsequent applications and, as a matter of principle, applications made by a State in the exercise of its lieu selection rights should be honored over competing private applications for the same land. Nelson A. Gerstala, 64 I.D. 225 (1957). Therefore, the desert land application to the extent that it is in conflict with the State's selection should have been and is hereby also rejected for that reason.

The decision of the Manager is affirmed as modified.

Mr. Robert Lee Payton is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Payton, then the adverse party to be served is:

State Lands Division
State of California
Sacramento, California

For the Director:

A. H. Dion

Enclosure

DISTRIBUTION:
Mr. Robert Lee Payton (Certified Mail)
Division of State Lands, State of California (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

42059

In reply refer to:
Los Angeles 0136042 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERI
Bureau of Land Management
Washington 25, D. C.

September 19, 1958

Certified Mail
Return Receipt Requested

DECISION

George W. Lane et al. : Desert Land Applications

Decisions of the Manager Affirmed

George W. Lane and the three others 1/ have appealed to the Director from decisions of the Manager of the Land Office, Los Angeles, California which rejected their desert land and special land-use permit applications because of the poor quality of the soils on the land and because water is not available in amounts required for irrigation or of a quality suitable for irrigated crop production.

As to the applications of George W. Lane, field reports, maps and other data show that the land extends onto or immediately overlies the playa formations of Silver Lake. The playa and the immediately overlying materials consist of unconsolidated silts and clays that are infertile, poorly drained, and unsuitable for irrigated crop production. As to the applications of Frank A. Lane and Yvonne M. Lane the reports state that the soils vary from fine silty sands to coarse sands underlain with gravel that are not suitable for crop production. As to the application of Emily L. Lagasse the reports state that the soils consist of unconsolidated silt, sand, and gravel; unsuitable for crop production.

In Andrew T. Johnson et al., A-27305 (September 25, 1957) involving other desert land applications in the Mojave Basin the Department

1/ The cases considered herein involve of 4 applicants and 8 applications as follows:
George W. Lane, desert land application Los Angeles 0136042, special land-use permit application Los Angeles 0136370.
Frank A. Lane, desert land application Los Angeles 0135946, special land-use permit application Los Angeles 0136372.
Yvonne M. Lane, desert land application Los Angeles 0135947, special land-use permit Los Angeles 0136371
Emily L. Lagasse, desert land application Los Angeles 0136044, special land-use permit Los Angeles 0136377.

stated that beneficial use of the water in the basin is now being made by lands already under irrigation, that the present use of the underground water already exceeds the long-time annual inflow available for beneficial use in the whole drainage area, and that further agricultural development would result in an overdraft of the replenishable water supply reaching the basin. In view of the foregoing circumstances this Bureau has taken the position that any further entries must be located on the most productive soil sites within the drainage. This is consistent with Departmental policy in similar cases. Joe B. Forehand et al., A-26693 etc. (December 9, 1954).

Allegations of appellants that the Mojave River pours some 35,000 acre feet of water into the basin annually, that a Mr. Wisselman has grown a satisfactory crop of alfalfa on the edge of Soda Lake, and other statements are unsupported and are not persuasive evidence that the lands herein involved are suitable for irrigated crop production. To justify a reclassification of land an appellant must make a positive and substantial showing that the adverse classification is in error. Mary Refugio Jackson et al., A-27236, A-27237 (February 29, 1956). This they have not done.

Moreover, appellants did not furnish with their applications an appropriate showing as to the character of the land involved or an adequate plan of irrigation to show that development of the land by irrigation is either practical or feasible as required by the regulation 43 CFR 232.14 2/ The soils report of the pH factor as submitted by appellants is applicable but not complete because it does not show such other pertinent features of the land as the texture, structure, or depth of soils, or the nature of the underlying materials. Neither does it show the topographical features of the land or the area of each legal subdivision that is irrigable. The plat merely shows the location of a well, and the general distribution of sprinkler irrigation equipment over a part of the land. This is no appropriate showing that the proposed irrigation system is adequate for the irrigation of all of the land under application or applicable to any part of it. Such showing cannot be construed as plausible evidence that the land is susceptible of irrigation by any practical means. Applications are subject to rejection for these reasons alone.

Appellants have filed applications for special land-use permits to explore for water and drill wells to make the required showing as to the availability of water for irrigation. It has been held by the Department that a special land-use permit may be issued, at the discretion of the Secretary, to permit a desert land applicant to go upon the land to determine whether or not water is available for irrigation. Jack B. Aldridge et al. A-27520 etc. (March 12, 1958). Such procedure

2/ Also see Departmental decision in Roy N. Brown, A-25935 (November 16, 1950).

is not applicable to the instance cases because the topography of the land is too rough, the soils are unfit for irrigation, and because beneficial use is already being made of all of the available water in the drainage basin.

The appellants have requested a hearing. A hearing, however, is not conducted as a matter of course to determine the proper classification of land but is held only if there is reasonable likelihood that it would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D., 9 (1957). We believe the evidence now in the record is sufficient to decide the issues. Therefore, the request for hearing is denied.

After careful consideration of the record it is concluded that the decisions of the Manager were correct, and they are hereby affirmed.*

George W. Lane and the other applicants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dixon

Enclosure

Distribution:
Mr. George W. Lane (Certified Mail)
Mr. Frank A. Lane (Certified Mail)
Mrs. Yvonne M. Lane (Certified Mail)
Mrs. Emily L. Lagasse (Certified Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

* The records of applications, Los Angeles 0136042 and 0135947 indicate that the lands therein may be valuable for gold, silver, lead, and copper. If the lands are in fact valuable for any of the aforementioned minerals, the lands are only subject to disposal under the U. S. mining laws. See 30 U.S.C. sec. 21.

42059

In reply refer to:
Los Angeles 0140715
0140716
0143035
0143698
5.04g

September 26, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

William Blair Dalbey et al. 1/	:	Desert Land Applications

Cases Remanded

William Blair Dalbey and three others have appealed from a decision of the Manager which rejected their desert land applications for the stated reason that the lands are more valuable for grazing than for desert land entry in view of the unavailability of water for irrigation.

The lands are located in Chuckawalla Valley, California. Field reports indicate that 28,000 acres in the Valley, designated as area "A" in the field report, have soils suitable for agricultural development, if water is available, and that 36,000 acres designated as area "B" are likewise suitable for agriculture if sufficient water is found to be available after the requirements of area "A" have been satisfied. The remaining lands consist of old lake beds, rough, rocky, hilly areas or lands otherwise unsuitable for agricultural purposes. 2/

The record further reveals that the annual rate of recharge to the underlying water table does not exceed 6,000 acre feet. This is considered to be an adequate water supply for the irrigation of about 1,280 acres. The record also indicates that Chuckawalla Valley is not

1/ The names of applicants and the respective land office serial numbers are as follows:

Name of Applicant	Land Office Serial No.
William Blair Dalbey	Los Angeles 0140715
Mrs. Hilda Blair Dalbey	0140716
Mr. Eugene M. Goatcher	0143035
Miss Eunice A. Clyatt	0143698

2/ On the basis of five acre feet of water per acre irrigated, area "A" would require a total of 140,000 acre feet of water and area "B" would require an additional 180,000 acre feet per annum. Therefore, applications for lands in addition to areas "A" and "B" would require a water supply in excess of 320,000 acre feet whereas the record indicates that 6,000 acre feet are available for irrigation each year.

an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the valley and drains into the Colorado River. Though the 6,000 acre feet determined to be available is not an absolute measurement but is based on estimate, it is derived from the most reliable sources of information available and there is no reason to conclude from the record, including the representations of the appellants in the present appeals that there is an adequate water supply available for the irrigation of more than about 1,280 acres of the lands in Chuckawalla Valley on a continuing basis.

The classification provides for the allowance of agricultural entries on the most productive soil sites within the drainage basin. Therefore, applications for the poorer quality of lands must be rejected even though they may possess some agricultural potential. This is consistent with the Department in Elizabeth Bullard et al., A-27242 (December 28, 1955) as well as the more recent decision in Ruby E. Huffman et al., 64 I.D. 57, 69 (1957).

Parts of the lands in issue lie in the extremities of the 28,000 acre area designated as containing the best soil sites in the area (area "A"). Due to the small scale of the map delineating area "A" from the remainder of the lands in the drainage area and the absence of sufficient details of topography and soil depth, texture, underlying materials, etc., the extent to which the lands in issue embrace the best agricultural sites is not entirely clear. It also appears that some of the available ground water is already being put to beneficial use on lands now being irrigated. Since the record indicates that there is only sufficient water for the irrigation of 1,280 acres, necessarily, agricultural developments in the Chuckawalla drainage must be limited to 1,280 acres.

All or some parts of the subject applications might be properly allowed provided that (1) the available groundwater is not already being put to beneficial use on lands now under irrigation, or otherwise appropriated or needed, and (2) the most beneficial use of the water supply would be achieved through the development of the lands for irrigation.

The record indicates that there may be an adequate water supply for the irrigation of about 1,280 acres in Chuckawalla Valley provided the water is not already appropriated or needed. However, the record is not clear on this point. Nor are the representations of the appellants persuasive evidence of error in the classification as not suitable for desert land entry. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956). Therefore, further appropriate consideration should be given to the proper classification of the lands.

Accordingly, the cases are remanded to the Manager through the Assistant to the State Supervisor, Los Angeles, for further appropriate action.

For the Director:

A. H. Dwor

DISTRIBUTION:
Mr. William Blair Dalbey (Regular Mail)
Mrs. Hilda B. Dalbey (Regular Mail)
Mr. Eugene M. Goatcher (Regular Mail)
Miss Eunice A. Clyatt (Regular Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

42059

In reply refer to:
Los Angeles 094972
0143478
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Lee Andrew Rose : Desert Land Entry

Acting Manager's Decision Affirmed

Lee Andrew Rose has appealed from a decision of the Acting Manager which rejected his application for reinstatement of his relinquished desert entry. The decision stated that "a relinquishment is for the purpose of granting to the United States all right, title, and interest in an entry, and not for the purpose of circumventing the desert land law."

The case record shows that (1) appellant's entry was allowed on August 8, 1952, and he thereafter furnished annual proof for the first and second year; (2) on July 9, 1956, James J. Thomas filed Contest No. 6794 against the entry; 1/ (3) on July 23, 1956, 15 days prior to expiration of its statutory period, the entryman relinquished his entry; (4) on July 24, 1956, applications for desert land entry, Los Angeles 0142982 and 0142983, were filed by Warren L. Rose and Lola M. Botkin, embracing the land within the entry. 2/ According to statements by the appellant these persons appear to be grantees of the land by a quitclaim deed executed by him. It appears from the record that although these applications were received subsequent to relinquishment, they were received prior to the time the relinquishment was noted of record; and (5) On August 28, 1956, desert land application, Los Angeles 0143478, was filed by the contestant for the land in issue. 3/ The record discloses that the entryman never produced a crop on the land by cultivation and irrigation as required by the desert land laws.

1/ In view of the fact that the entry was relinquished, the matter of the contest is no longer pertinent in this case.

2/ Applications rejected by the Manager; no appeal was taken from the rejection.

3/ Application suspended by the Manager.

The appellant contends that he should be allowed to withdraw his relinquishment, and that the entry be considered as reinstated and he be granted an extension of time within which to make final proof.

The filing of an unconditional relinquishment operates eo instanti to terminate the entry, Moritz v. Hinz, 37 L. D. 382 (1908), and the lands are subject to further application or other appropriation after the records are noted. 43 CFR 105.1(a) (2). See also Assistant Secretary's memorandum of January 31, 1912, 40 L. D. 397. Furthermore, the Department has held that there is no legal right to reinstatement, but that such action lies wholly within the discretion of the Secretary (or his delegate). Cf. Brookhaven Oil Company, A-27459 (July 29, 1957). However, a reinstatement will not be allowed if the rights of others have intervened. Cf. J. Martin Davis et al., A-26564 (January 12, 1953).

The relinquishment of the entry was noted on the records of the Land Office on July 25, 1956. On August 28, 1956, desert land application, Los Angeles 0143478, was filed by James J. Thomas for the lands embraced in the relinquished entry. Therefore, Mr. Thomas's application is an intervening right, and the application for reinstatement was properly rejected. Furthermore, as to withdrawals of relinquishments the Deputy Solicitor by memorandum dated May 31, 1956, stated in pertinent part: 4/

> "I do not agree that a party who files an unconditional relinquishment of all his rights is entitled later to request that the relinquishment be withdrawn and his rights restored. The law presumes that the act of relinquishing one's rights is a voluntary act and is done with the full knowledge of the effect of the act. It is my opinion that as a general practice the Department should adopt a firm policy that a right once relinquished is lost, absent strong equitable considerations requiring otherwise. Any other policy would result in placing the burden on field personnel to inquire in each case whether a relinquishment filed is conditioned upon some private agreement or is meant to be final and unconditional."

Accordingly, the decision of the Acting Manager is affirmed.

Mr. Lee Andrew Rose is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Rose, then the adverse party to be served is: Mr. James J. Thomas, P. O. Box 6054, Calipatria, California.

For the Director:

A. H. Dunn

Enclosure

4/ In connection with the case of Ted Giem and Carl V. Giem, Colorado 02266

DISTRIBUTION:

Mr. LeRoy Thomas, Attorney at Law (Certified Mail)
Mr. Lee Andrew Rose (Regular Mail)
Mr. James J. Thomas (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR/JLR

43552

DISTRIBUTION:

Mr. Lefoy Thomas, Attorney at Law (Certified Mail)
Mr. Leo Andrew Rose (Regular Mail)
Mr. James J. Thomas (Regular Mail)
Legal Staff Office
Appeals List No. 2
AJA/JRA

In reply refer to:

Los Angeles 099829
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 15, 1958

Certified Mail
Return Receipt Requested

DECISION

Lysander C. Pond	:	Desert Land Entry
	:	
	:	

Manager's Decision Affirmed

The above-named party has appealed from the decision of the Manager which holds his desert land entry for cancellation for the reason he has failed to submit annual proof of expenditures for the third year in accordance with the desert land law. 1/

The records indicate that the entryman has failed to submit annual proof of expenditures for the third year of the entry after due notice thereof by the Manager. No evidence of compliance having been filed, the entry was subsequently held for cancellation.

The appellant contends that he did file the required proof. However, a search of the records in the land office failed to disclose that such had been submitted. It appears that the appellant may refer to the combined annual proof 2/ submitted by him for the first and second years on November 14, 1956.

The law makes no provision for the extension of time in which to file annual proof; such proof must be submitted by the anniversary date of the entry; nor does it provide for the waiver of the requirement that such proof must be submitted. Section 5 of the Act of March 3, 1891, provides in pertinent part that if the desert land entryman "* * *shall fail during any year to file the testimony (annual proof) the land shall revert back to the United States, * * * and the entry shall be cancelled* * *". Cf. Durward E. Fry, 45 L.D. 172 (1916).

1/ Act of March 3, 1877, as amended by the Act of March 3, 1891 (43 U.S.C. 1952 ed., sec. 321 et seq), and the regulations thereunder 43 CFR 1954 ed., 232.19.

2/ There also appears to be some question as to the breakdown of the amount of expenditures for the first and second years as submitted, and whether the amount shown for surveys can be accepted. Cf. 43 CFR 1954 ed., sec. 232.20(a).

However, this decision is without prejudice to the right of the appellant within 30 days from date of service of notice hereof to file with the Manager a request for suspension of cultivation and improvements in accordance with the act of July 30, 1956 (43 U.S.C., 1952 ed., Supp.IV, secs. 336a-336d). Such request may be made on Form 4-1331 (November 1956) obtainable from the Manager. If such request is made, the entry will be suspended until March 1, 1959, or until the appellant requests that the suspension be lifted whichever is earlier.

Requests for leave of absence under the act of July 30, 1956, supra, filed in conformity with the statute, must be allowed where the entry was "subsisting on March 1, 1956" as provided thereby. However, a grant of leave of absence does not excuse lack of compliance with the desert land law and regulations during the period prior to the grant. If the entry was subject to cancellation for defects which cannot be remedied under the laws existing prior to the passage of the relief act, the grant of a leave of absence will not remedy such defects and the entry will remain subject to cancellation. Eugene Bellos, et ano, Idaho 04851, et ano (June 2, 1958).

Accordingly, the decision of the Manager is affirmed.

Mr. Lysander C. Pond is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. Lysander C. Pond (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

43552

In reply refer to:

Blackfoot 055214
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 14, 1958

DECISION

Roy Washburn	:	Desert Land Entry

Manager's Decision Reversed
Case Remanded

Mr. Washburn has appealed from a decision of the Manager rejecting in part his final proof and cancelling the entry as to one of the four subdivisions in the entry for the stated reason that " * * * the means for conveying irrigation water to the irrigable lands has (sic) not been constructed." The Manager relied upon 43 CFR, 1954 ed., 232.30 which recites in part that: "The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation." We believe that the necessary, permanent main ditch and laterals have been constructed. Very little additional work apparently would be required to bring water to all the irrigable land in the entry. Cf. Donald A. Cole, Los Angeles 093854 (March 17, 1958).

The rejection of the final proof prima facie alleging compliance with the law, on the basis of a report of field examination, was improper. A desert land entry is not to be cancelled for defects not appearing on the face of the record without giving the entryman an opportunity to be heard. Claude E. Crumb, 62 I. D. 99 (1955).

The record shows that the entryman has constructed the permanent main and lateral ditches, necessary to irrigate all of the irrigable lands in the entry with the possible exception of the subdivision in issue. However, the topography of the lands is such that gravity flow would bring water onto most of the irrigable land on the subdivision in issue.

Moreover, the record indicates that " * * * water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system * * *." 43 CFR 232.32(c).

We find from our review of the record that the appellant has complied with the requirements of the desert land laws and the implementing regulations.

Accordingly, the decision of the Manager is reversed and the case remanded to him through the Bureau's State Supervisor at Boise, Idaho, for the issuance of final certificate to all the land in the entry, if all else be regular.

Acting Director

DISTRIBUTION:

Mr. Roy Washburn (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
FF

appeal to Sec
affirmed A-27942 6/15/59

In reply refer to:
Los Angeles 039079
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 17, 1958

Certified Mail
Return Receipt Requested

DECISION

Harley G. Ball et al.	:	Application for Reinstatement of Cancelled Desert Land Entry

Decision of Manager Affirmed

Harley G. Ball and Otis D. Ball have appealed from a decision of the Manager, denying their application, as heirs of Frederick E. Bosworth (deceased) for reinstatement of Mr. Bosworth's cancelled desert land entry which embraced the SE$\frac{1}{4}$ sec. 19, T. 16 S., R. 12 E., S.B.M., California.

The facts of the case are recited in detail in the Manager's decision. The appellants admit these facts and that final proof was not submitted. In substance, they term as a mere "technicality" the fact that the entryman or his heirs failed to make final proof on the land embraced in the entry within the time prescribed by law, and request that the failure to do so be excused, and they be permitted to perfect the entry and submit final proof. The appellants rely on Fred Bartine, 59 L. D. 110 (1945) in support of their request.

A review of the record shows the entry was properly cancelled after due notice 1/ and that the cancellation was in conformance with applicable law. Although reinstatements may be granted in proper cases (43 CFR, 1954 ed., 107.2), the facts here do not authorize reinstatement. An entry will not be reinstated unless facts are established or errors of law discovered showing that the cancellation of the entry was wrongful. Wiley v. Patterson, 13 L.D. 452 (1891).

The records show that the land in issue is within the boundaries of a first form withdrawal of October 19, 1920, pursuant to the Reclamation Act, 43 U.S.C. sec. 371 et seq. Where, as in the instant case, surveyed land embraced in a desert land entry is thereafter placed in a first form reclamation withdrawal and the desert land entry is later cancelled, the withdrawal will become effective as to such land upon cancellation of the entry. George B. Willoughby, A-25292 (September 21, 1949). The land is not subject to further entry by reinstatement of

1/ Due notice was had by serving Mary B. Bosworth, heir of the entryman, with an expiration notice.

the prior entry, so long as the withdrawal is in effect. James F. Rapp, A-25284 (July 22, 1948).

The present application for reinstatement is, in effect, an effort to reopen a case closed more than 23 years ago. "Principles of orderly administration dictate against the reopening of such a case." State of Louisiana, 61 I.D. 170 (1953). The appellants must be presumed to have known that the entry could not still be valid after such a lapse of time and that there is no warrant for reinstating the entry. The Department has held in many cases that, even where a prior action was erroneous, the Department will not correct its proceedings where the parties have allowed a long period of time to elapse before seeking relief. George W. Dahl, A-27415 (December 10, 1956).

The decision of the Manager is affirmed.

Messrs. Harley G. Ball and Otis D. Ball are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

A. H. Shaw

For the Director

Enclosure

DISTRIBUTION:

Hon. Bob Wilson, Member of Congress
Mr. Phil D. Swing, Attorney for Appellants (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

45092

appeal to be
affirmed A-27990 8-28-59

DESERT LAND * 2 Application

A desert land application must be accompanied by plausible presumptive evidence of an adequate water supply for the irrigation of the land and a plan of irrigation completed in sufficient detail to reasonably demonstrate that the land is susceptible of irrigation development by some practicable means.

* 3 Classification

A desert land application is properly rejected where there is no evidence of a water supply available for the irrigation of the land and all of the water supplies within the drainage area are already being put to beneficial use.

PUBLIC LANDS * 8 Special Land-use Permit (December 18, 1958)

An application for special land-use permit to drill a well to make the showing required by the regulations in 43 CFR 232.14 as to water supply is properly rejected where the record shows that all of the water within the drainage is already being put to beneficial use.

Inez Ruth Stevens, Los Angeles 0116304 etc. (December 18, 1958)

RO

DESERT LAND * 2 Application

A desert land application must be accompanied by plausible presumptive evidence of an adequate water supply for the irrigation of the land and a plan of irrigation completed in sufficient detail to reasonably demonstrate that the land is susceptible of irrigation development by some practicable means.

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PUBLIC LANDS * 8 Special land-use Permit (December 18, 1956)

An application for special land-use permit to drill a well to make the showing required by the regulations in 43 CFR 232.14 as to water supply is properly rejected where the record shows that all of the water within the drainage is already being put to beneficial use.

Inez Ruth Stevens, Los Angeles Office etc. (December 18, 1956)

In reply refer to:
Los Angeles 0116304
0134672
5.04g

December 18, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Inez Ruth Stevens	:	Desert Land Application Special Land-use Permit

Decision of the Manager Affirmed, as Modified

Inez Ruth Stevens has appealed from a decision of the Acting Manager which rejected her desert land application because there is no evidence of water available for the irrigation of the land.

The land sought is located south of the Kramer Hills in what is commonly referred to as the "Middle Mojave". Field reports reveal that the land lies outside the "area of influence" of the Mojave River and that water conditions are poor both as to the quantity of water that might be recovered for irrigation as well as the depth from which it would have to be pumped for irrigation use. Moreover, field reports reveal that the present use of underground water in the Mojave Basin already exceeds the long-time inflow available for beneficial use in the whole drainage area, and that further agricultural development would result in an overdraft of the replenishable water supply reaching the basin. In the matter of Andrew T. Johnson et al., A-27305 (September 25, 1957) which involved lands similarly situated within the Mojave Basin, the department held that the desert land applications were properly rejected.

Allegations of appellant that there are producing water wells on the Lockhart ranch and at certain other locations are not persuasive evidence of error in the classification of the land sought as unsuitable for desert land entry as these are located "within the area of influence" of the Mojave River where there is a known source of water supply. Appellant's references to wells located "outside the area of influence" of the River, as are the lands in issue, such as the wells he refers to in T. 8 N., R. 5 W. bear out the conclusion reached in the field report that there is no water at such locations. Therefore, the application must necessarily be rejected. Walter E. Scott, A-27293 (June 21, 1956).

Moreover, the desert land application is not accompanied by any plausible presumptive evidence that water in amounts required for the irrigation of the land is available nor did the applicant furnish with her application an adequate plan of irrigation to demonstrate that the development of the land for irrigation is either practical or feasible as required by the regulation in 43 CFR, 1954 ed., 232.14. The Bureau is not warranted in spending funds for the field investigation of the lands sought in the absence of a proper application which complies with the statutory and regulatory requirements (43 U.S.C. 322). The application was subject to rejection for these reasons alone.

The appellant has filed application Los Angeles 0134672 for a special land-use permit to explore for water and drill a well to make the required showing as to the availability of water for irrigation. It has been held by the Department that a special land-use permit may be issued, at the discretion of the Secretary, to permit an applicant to go upon the land to determine whether or not water is available for irrigation. Jack B. Aldridge et al., A-27520 etc. (March 12, 1958). Such procedure is inapt in this case since it has been determined that all available water in the Mojave Drainage is already being put to beneficial use.

The appellant has requested a hearing. However, a hearing is not conducted as a matter of course to determine the proper classification of the land but is held only if there is reasonable likelihood that it would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957). We believe the evidence in the present record is sufficient to decide the issues. Therefore, the request for hearing is denied.

Accordingly, the decision of the Acting Manager is affirmed, as modified.

Inez Ruth Stevens is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney at Law (Certified Mail)
Mrs. Inez Ruth Stevens (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

46567

appeal to Sec. 6-29-59
Dismissed A-27995

DESERT LAND * 2 Application

An applicant for desert land entry must furnish with his desert land application a plan of irrigation completed in sufficient detail to reasonably demonstrate that the land is susceptible of reclamation by some practical means.

Land is properly classified as unfit for desert land entry where the depth to ground water exceeds the depth from which it is economically feasible to pump for the production of irrigated crops.

PUBLIC LANDS * Special Land-Use Permit

An application for special land-use permit to allow a desert land applicant to go upon the land to explore for water to make the required showing as to irrigation water supply in accordance with 43 CFR 232.14(a) is properly rejected where the record of wells in the area indicate that the depth to water exceeds the depth from which it is practically feasible to pump water for the irrigation of the land sought.

Clark F. Dickson, Los Angeles 0135648, 0136319 (December 18, 1958)

20

In reply refer to:

Los Angeles 0135648
0136319
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 18, 1958

Certified Mail
Return Receipt Requested

DECISION

Clark F. Dickson	:	Desert Land Application
	:	Special Land Use Permit Application
	:	

Decision of the Manager Affirmed

Clark F. Dickson has appealed from a decision of the Manager which rejected his desert land application Los Angeles 0135648 and application for special land-use permit Los Angeles 0136319 because the ground water in the area is saline, soils are gravelly to sandy loams, and the depth to ground water is 350 to 370 feet which exceeds the depth from which it is economically feasible to pump irrigate for the production of irrigated crops in the area.

The field report reveals that the soils on the land are sandy to gravelly loams. It also indicates that the ground water in the vicinity is of inferior quality for the production of irrigated crops. However, the primary issue is the depth from which the water must be pumped for the irrigation of the land in view of the immature, marginal, character of the soils and the length of growing season which affects the types and yields of crops that can be produced.

As to the character of the soils, the appellant by his supplemental application filed with the Manager on June 16, 1958 states that:

> "The entire area is over-laid with a sandy loam of good quality which is from about one-foot in depth to a depth that is unknown; that a considerable portion of the soil, possibly all of it, is underlaid by a hardpan, commonly known as 'Calichi'; that 'Calichi' is not a good soil, but it can nevertheless be developed with sufficient water to a condition in which it will bear moderate crops; * * *" (Emphasis supplied).

As to the issue of the depth to water the field classification report as well as the representations of appellant including corroborating statements of others in support of the appeal indicate that the depths to water in the wells located in sections 24 and 26, T. 29 S., R. 39 E., are 300 to 370 feet. The other wells referred to by the appellant which are located in sections 31 and 33, T. 29 S., R. 39 E., and section 3, T. 30 S., R. 39 E., vary from 80 feet for the well in section 31, T. 29 S., R. 39 E., to 239 feet for the well in section 3, T. 30 S., R. 39 E. These wells lie at elevations ranging from 1,950 feet to 2,200 and are located on or near the valley floor. Whereas, the land in issue lies at an elevation of 2400 to 2500 feet or more and 400 to 500 feet above the valley floor. Though the exact location of the wells in sections 24 and 26, T. 29 S., R. 39 E., are not precisely known, they apparently lie at elevations of 100 to 200 feet lower than the land sought. The field report indicates that the elevation of the surface of the land extending to the east from the valley floor at this point rises more rapidly than does the surface level of the water table underlying the land and that the depth to water becomes progressively greater from west to east. The statistics of wells submitted by the appellant substantiate the conclusion reached by the field report in this respect. Therefore, the depth to water on the S½, Section 19, T. 29 S., R. 30 E. (the land in issue) may be 400 feet or more.

The fact that lands in San Joaquin Valley, California, and other similar areas are being irrigated by pumping from wells from depths of 400 feet or more is not persuasive evidence that the subject land is susceptible of successful irrigation by pumping from like depths. The frost free period in Fremont Valley is about 230 days as compared to 316 days in the San Joaquin Valley. Neither is the testimony of Claude L. Welch, Attorney, that he produces successful crops in Kern County persuasive of the practicability of the development of the land sought as he has not shown that the land he owns is irrigated under similar circumstances of pumplift, or other factors affecting irrigation operations, or that the crops he grows could actually be produced on a commercial paying basis.

Moreover, the appellant did not file with his desert land application a plan of irrigation in sufficient detail to reasonably demonstrate that the land is susceptible of irrigation development by any practical means as required by the regulation 43 CFR 232.14(a); Cf. George V. Franklin et al., A-26606 etc. (June 26, 1953). Such a plan must show the location of the proposed well or wells, the size of well, the anticipated depth in feet and draw-down water level, and volume of output;

the size and type of proposed pump, the source of power for it; and the size capacity, and field distribution of canals, ditches, flumes, diversion boxes, sprinkler irrigation systems or other equipment or installations required to distribute the water to all of the irrigable parts of each legal subdivision to be irrigated. The showing must also include a summary estimate of development and equipment costs. It must also indicate the acreages and types of crops that will ordinarily be produced and the normal seasonal water requirement for the production of such crops. Mr. Dickson's application indicates that he proposes to drill a 14-inch well which he states is adequate for the irrigation of 160 acres. However, the entry is for 320 acres. Moreover, on the basis of the production reported from wells in the area it appears that at least three wells might be required for the irrigation of the entire 320 acres. The plan submitted merely shows the location of a prosposed well and an outline of a water distribution system. The Bureau is not warranted in spending funds for field examination of the lands sought in the absence of a proper application which complies with statutory and regulatory requirements (43 U.S.C. 322). The application is subject to rejection for this reason alone. Roy N. Brown, A-25935 (November 16, 1950).

The appellant has filed application for a special land-use permit to explore for water and drilla well to make the showing required by the regulations in 43 CFR 232.14(a) as to water supply for the irrigation of the land. It has been held by the Department that such a permit may be issued, at the discretion of the Secretary, to permit a desert land applicant to go upon the land to determine whether or not water is available for irrigation. Jack B. Aldrich et al., A-27520 etc. (March 12, 1958). Such procedure is inapposite in the present case as records of wells indicate that ground water is available. However, since the depths to water exceeds the depth from which it is practically feasible to pump water for irrigation, the land could not be properly classified as suitable for desert land entry. Cf. Elizabeth Bullard et al., A-27242 (December 28, 1955). Accordingly, the application for special land-use permit was properly rejected.

Therefore, the decision of the Manager is affirmed.

Clark F. Dickson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Pinch

Enclosure

DISTRIBUTION:
Mr. Kenneth M. Smith, Attorney, (Certified Mail)
Mr. Clark F. Dickson (Regular Mail)
Appeals List No. 1
CFG

46567

appeal to Sec
affirmed A-28054 8-28-59
LLL(Sa)

DESERT LAND * 3 Classification

It is proper to refuse to classify land as suitable for desert land entry where no adequate showing has been made that water is available for the reclamation of the land.

Peter C. Stevens et al., Los Angeles 0116305 etc. (February 18, 1959)

In reply refer to:
Los Angeles 0116305 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Peter C. Stevens et al. : Desert Land Applications

Manager's Decisions Affirmed

Peter C. Stevens and other desert land applicants, listed on Appendixes "A" and "B", have appealed from decisions of the Manager rejecting their desert land applications for the stated reason that there is no evidence of an adequate supply of irrigation water within economic depths on the lands applied for. 1/

The land sought lies in an area located south of the Kramer Hills along U. S. Highway 395, between Adelanto and the junction of U. S. Highway 395 and U. S. Highway 466. The land lies in what is commonly called the "Middle Mojave." The report of field examination discloses (1) that water conditions in the area appear to be of an adverse nature, both as to quantity of water and depth of water; (2) that no record could be found of any well in the area that produced any quantity of water; 2/and (3) that water conditions appear unfavorable due to the depth of water. The record shows that special land-use permits have been issued for drilling test wells. One of these wells was reported to have been drilled to a depth of 410 feet without encountering any appreciable amount of water. None of the test wells has been successful.

The appellants contend that there are water wells in the vicinity of the land applied for and that there is plenty of water in the area. However, there is nothing in the appeals to show that water for irrigation is available for irrigation on the land in issue. Five of the appellants request permission to go onto the land for the purpose

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1/ Special land-use permit application, Los Angeles 0134671, filed by Peter C. Stevens requesting permission to drill an exploratory well, was also rejected by the Manager.

2/ The Ground Water Branch, Geological Survey, Department of the Interior, describes the area as one with very poor possibilities for water development.

of drilling a test well. 3/ These five appellants contend that the Lockhart Ranch, which is located in the area, presently has 31 producing water wells which produce 12,000,000 gallons of water per day. The records show that a great part of the Lockhart Ranch is within the zone of influence of the Mojave River waters and that attempts made by Lockhart to drill wells on the ranch outside of that zone of influence have resulted in failure. See Andrew T. Johnson et al., A-27305 (September 25, 1957).

The question in issue is one of proper classification and the appellants have submitted no positive evidence that the classification is erroneous. To justify a classification of land as suitable for desert land entry, there must be a showing that water is available to the land for its reclamation. Walter E. Scott, A-27293 (June 21, 1956). This concept has been applied to other lands in the same general area, for which desert land entries were sought. Andrew T. Johnson et al., supra. On the basis of the evidence in the record, it does not appear that the appellants have overcome the adverse classification, and there is no evidence in the record to show that the classification is erroneous. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

None of the applications is accompanied by a plan of irrigation in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by any practical means. Cf. Roy N. Brown, A-25935 (November 16, 1950). Such a plan must show the location of the proposed well or wells, the size of the proposed well, the anticipated depth to water and the volume of output, along with the source of power for the pump, and the size and distribution of canals, flumes, diversion boxes, and other installations and equipment necessary to distribute the water to all of the irrigable parts of each legal subdivision under application as well as a summary estimate of investment costs. Since the adequacy of the irrigation system depends upon the water requirements of crops to be grown, the plan must indicate the types of crops that will ordinarily be produced and include an estimate of the normal seasonal water requirements for the production of such crops. The applications are defective and were subject to rejection for this reason alone. Cf. Roy Leonard Wilbur et al., 61 I.D. 157 (1953).

After careful consideration of all the evidence in the record it is concluded that the decisions of the Manager are correct and they are affirmed. The requests for special land-use permits to drill exploratory wells are denied.

The request for a hearing is also denied, since there is no reasonable likelihood that a hearing would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I. D. 9 (1957).

3/ The appellants have also requested a hearing.

Mr. Peter C. Stevens and the other appellants listed on Appendixes "A" and "B" are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney for appellants listed on Appendix "A" (Certified Mail)
Each appellant listed on Appendix "A" (Regular Mail)
Each applicant listed on Appendix "B" (Certified Mail)
Lands Staff Officer
Appeals List No. 1
AIR

APPENDIX "A"

Name	Case No. Los Angeles	Address
Mr. Peter C. Stevens	0116305	2911 Baltic Ave., Long Beach, Calif.
Mr. Richard W. Lyon, Sr.	0116568	1421 Redondo Ave., Long Beach, Calif.
Mr. Fred W. Wilmot, Jr.	0135868	314 Marker Lane, Long Beach 5, Calif.
Mrs. Mary Z. Trainor	0151346	2306 Harold Circle, Burbank, Calif.
Mrs. Iva A. Vroom	0151724	4509 So. Hoover St., Los Angeles 34, Calif.

APPENDIX "B"

Name	Case No. Los Angeles	Address
Mr. Joseph K. Coady	0123354	10120 E. Center St., Bellflower, Calif.
Miss Mary E. Raney	0131923	271 Prospect Ave., Long Beach 3, Calif.
Mrs. Edna B. Raney	0131924	271 Prospect Ave., Long Beach 3, Calif.
Mr. Fred M. Raney	0131925	271 Prospect Ave., Long Beach 3, Calif.
Mr. Donald R. McKenzie	0151546	1387 Tormaline St., Mentone, Calif.

A P P E N D I X "A"

Name	Case No. Los Angeles	Address
Mr. Peter C. Stevens	0116305	2911 Baltic Ave., Long Beach, Calif.
Mr. Richard W. Lynn, Sr.	0116568	1421 Redondo Ave., Long Beach, Calif.
Mr. Fred W. Wilmot, Jr.	0135868	314 Marker Lane, Long Beach 5, Calif.
Mrs. Mary Z. Trainor	0151346	2306 Harold Circle, Burbank, Calif.
Mrs. Iva A. Vroom	0151724	4309 So. Hoover St., Los Angeles 34, Calif.

A P P E N D I X "B"

Name	Case No. Los Angeles	Address
Mr. Joseph K. Coady	0123354	10180 E. Center St., Bellflower, Calif.
Miss Mary E. Raney	0131923	271 Prospect Ave., Long Beach 3, Calif.
Mrs. Edna B. Raney	0131924	271 Prospect Ave., Long Beach 3, Calif.
Mr. Fred M. Raney	0131925	271 Prospect Ave., Long Beach 3, Calif.
Mr. Donald R. McKenzie	0151546	1387 Tormaline St., Mentone, Calif.

LLSa)

DESERT LAND * 2 Application

A desert land applicant must furnish with his desert land application plausible presumptive evidence of an adequate water supply for the irrigation of the lands, a plan of irrigation completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practicle means, and a showing that the land itself is of a character susceptible of crop production by irrigation.

* 3 Classification

It is proper to refuse to classify land for desert land entry where the soils on the land are rocky and sandy and of poor quality for irrigated crop production and the depth to water exceeds the depth from which it is practical or feasible to pump water for irrigation.

John F. Franklin, Los Angeles 0123231 (February 18, 1959)

RO

In reply refer to:
Los Angeles 0123231
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

February 18, 1959

Certified Mail
Return Receipt Requested

DECISION

John F. Franklin : Desert Land Application

Decision of the Manager Affirmed

John F. Franklin has appealed from a decision of the Manager which rejected his desert land application because the ground water in the area is saline, soils are gravelly to sandy loams, and the depth to ground water is 300 feet or over which exceeds the depth from which it is economically feasible to pump irrigate for the production of irrigated crops in the area.

The field report reveals that the soils on the lands are sandy to gravelly loams. It also indicates that the ground water in the vicinity is of inferior quality for the production of irrigated crops. However, the primary issue is the depth from which the water must be pumped for the irrigation of the land in view of the immature, marginal, character of the soils which affects the types and yields of crops that can be produced. The report shows that the depths to water in nearby wells located on sections 24 and 26, T. 29 S., R. 39 E. are 300 and 370 feet respectively.

The fact that lands in San Joaquin Valley, California are being irrigated by pumping from depths of 400 feet or more is not persuasive evidence that the lands in issue are susceptible of successful irrigation by pumping from like depths. The frost free period in the vicinity is about 230 days as compared to 316 days in the San Joaquin Valley. Appellant asserts that thousands of acres are being developed for the production of commercial market crops in the immediate vicinity. However, he has failed to submit any specific information concerning the types of yields of crops produced, the location, soil types involved or other pertinent issues concerning those lands which would be persuasive of the issue of the suitability of the lands under application for irrigated crop production.

Irrespective of the issue of the proper classification of the lands, the application could not be properly allowed as the applicant did not file with his application Form 4-274 an appropriate showing as to water supply, plan of irrigation, or showing as to the character of the land itself as required by the regulation 43 CFR 232.14.

First, a desert land applicant must furnish plausible presumptive evidence that an adequate underground water supply is available for the irrigation of the land. An adequate water supply is construed to mean the amount required to meet the seasonal requirements for the production of irrigated crops typical to the area on all of the irrigable portions of the lands involved. Cf. Robert Charles Powell, A-25828 (April 7, 1950). A proper showing as to water supply must include any information obtained from operators irrigating from nearby wells, or information from the State Engineer's Office, or other available technical information or advice concerning the occurrence of ground water in the vicinity; the location, depth, static water level, draw-down water level, and volume of flow, acres irrigated, and types of crops produced by wells in the vicinity heretofore sunk and affording a water supply to adjoining or nearby lands; or a statement that there is no such information available.

Second, an applicant must furnish with his application a plan of irrigation completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation by some practical means. Cf. Roy N. Brown, A-25935 (November 16, 1950). The plan must show in addition to the location of the proposed well or wells, the size of the proposed wells; the anticipated depth to water and volume of output; the source of power for the pump; the type and size of pump (including sprinkler irrigation systems), canals, ditches, flumes, diversion boxes, or other equipment or installations necessary to distribute the water to all of the irrigable parts of each legal subdivision to be irrigated along with a summary estimate of investment costs. Since the test of the adequacy of the irrigation system depends upon the crops to be grown, the plan must indicate the acreages and types of crops that will ordinarily be produced and the normal seasonal water requirements for the production of such crops.

Third, an applicant must submit a showing as to the character of the land itself to reasonably demonstrate that the soils, topography, and other features of the land are of a character that is susceptible of crop production by irrigation.

It is clear from the record that the showing made by the applicant falls far short of the requirements of law. The Bureau is not warranted in spending funds for the field investigation of the lands sought in the absence of a proper application which complies with the statutory and regulatory requirments. (43 U.S.C. 327). The application was subject to rejection for these reasons alone. Therefore, the decision of the Manager is affirmed, as modified.

John F. Franklin is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

A. H. Dwon

Enclosure
(Distribution on page 3)

DISTRIBUTION:

Mr. John F. Franklin (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

49261

DISTRIBUTION:

Mr. John F. Franklin (Certified Mail)
Bank Staff Officer (A)
Appeals List No. 1
OGC

LU (Sec)

DESERT LAND * 3 Classification

A desert land application for lands to be irrigated from wells is properly rejected where the beneficial use of available ground water is now being made by lands already under irrigation and the present use of the underground water in the drainage already exceeds the long time annual inflow into the whole drainage area.

A desert land application is properly rejected where the soils on the lands are unfit for irrigated crop production.

Edward F. Urban, Los Angeles 0122230 (March 4, 1959)

LO

In reply refer to:

Los Angeles 0122230
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 4, 1959

Certified Mail
Return Receipt Requested

DECISION

Edward F. Urban : Desert Land Application
:
:

Decision of Manager Affirmed

Edward F. Urban has appealed from a decision of the Acting Manager which rejected his desert land application because the land contains soils too poor for irrigation and because of inadequate water supplies for irrigation.

The lands are located within the Mojave drainage basin. Field reports show that the soils on the lands are coarse sands and gravels unsuited for irrigated crop production. Moreover, the record reveals that the only known source of water supply is derived from the underflow and leakage of the Mojave River, beneficial use of the water is being made by lands already under irrigation, the present use of ground water in the Mojave Valley already exceeds the long-time annual inflow available for use in the drainage area, and that any further agricultural development would require further additional use of underground water which would result in an overdraft of the replenishable water supply in the Mojave River basin. See Dale K. Isaacs et al., A-27774 (December 12, 1958).

The Department has held that a desert land application cannot be allowed where the soils are unfit for irrigated crop production. Ruby D. Moore et al., 64 I.D. 137 (1957). The Department has also held that a desert land application should be allowed only if an adequate water supply is available, taking into account the needs of other lands now being irrigated. William E. Gelder, A-27084 (April 12, 1955) or where allowance of additional entries would aggravate an already serious water situation. Joe B. Forehand et al., A-26693, etc. (December 9, 1954).

Furthermore, the application couldnnot be properly allowed even though the lands were determined to be suitable for irrigation as it is not accompanied by an appropriate showing as required by the regulation in 43 CFR, 1954 ed., 232.14. A desert land application must be accompanied by plausible, presumptive evidence that water is available for irrigation along with a plan of irrigation in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation. Neither is there a showing that the lands are of a character suitable for irrigation development.

The issue is one of the proper classification of the land and appellants have now shown that the adverse classification is in error. Cf. Mary Refugio Jackson, A-27326 (February 29, 1956). Therefore, the decision of the Manager is affirmed.

Edward F. Urban is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Irwin,

Enclosure

DISTRIBUTION:
Mr. Edward F. Urban (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

50991

appeal to Sec.
affirmed, A-28066
11-20-59

LO (Sec)

DESERT LAND * 3 Classification

Where land applied for under the Desert Land Act is classified as not suitable for agricultural purposes because of the poor quality of the water available for irrigation in the area, the classification will not be distrubed in the absence of positive and substantial evidence showing that the classification is erroneous.

Harold B. Anderson, Jr., et al., Los Angeles 0124695, etc. (March 5, 1959)

LD

In reply refer to:

Los Angeles 0124695
0124696
0135080
0135081
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 5, 1959

Certified Mail
Return Receipt Requested

DECISION

Harold B. Anderson, Jr.	:	Desert Land Applications
Theresa G. Anderson	:	
Theodore C. Manchester	:	
Elinor F. Anderson	:	
	:	

Manager's Decisions Affirmed

The above-listed parties have appealed from decisions of the Manager rejecting their desert land and special land-use permit applications* because the underground water available for irrigation of the land sought is not suitable for agricultural use for the reason that it contains a high percentage of boron and sodium.

The lands are located in Coyote Dry Lake Valley. Coyote Valley is about ten miles of the community of Yermo, California. Coyote Lake covers about 150 square miles. Coyote Dry Lake is a hard, dry playa about nine square miles in extent. The lands in issue are located from half mile to five miles of the dry lake playa. Chemical analysis of water from six wells in Coyote Valley indicates that water is moderately to highly mineralized the highest concentration of dissolved salts being in wells near the south end of the playa. The waters contain concentrations of sodium chloride or sodium sulfate. The field examination disclosed that water level appears to be fairly shallow; and that wells in the area show water of an unsuitable quality due to high sodium and boron content.

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* Special land use permit applications, Los Angeles 0135502, 0135503, and 0135518, were filed by Theresa G. Anderson, Theodore C. Manchester, and Elinor F. Anderson, respectively, requesting permission to drill an exploratory well.

The appellants contend that the water obtained from deep wells is of satisfactory quality to support farming. In view of the findings of the field examination it would appear that the contentions of the appellants are not sufficient to establish that the classification of the land as unsuitable for desert land entry is erroneous. Before land may be classified for desert land entry, it must be shown that water is available in sufficient quantity and of a quality suitable for irrigation. Andrew T. Johnson et al., A-27305 (September 25, 1957). On the basis of the evidence in the record, it does not appear that the appellants have overcome the adverse classification, and there is not sufficient evidence in the record to show that the classification is erroneous. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

After carefully considering the facts in the cases, it is concluded that the desert land and special land-use permit applications were properly rejected.

Accordingly, the decisions of the Manager are affirmed.

Harold B. Anderson, Jr., Thersea G. Anderson, Theodore C. Manchester, and Elinor F. Anderson are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dixon

Enclosure

DISTRIBUTION:
Mr. Harold B. Anderson, Jr. (Certified Mail)
Mrs. Theresa G. Anderson (Certified Mail)
Mr. Theodore C. Manchester (Certified Mail)
Mrs. Elinor F. Anderson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

appeal to Sec affirmed A-28082 8-24-59 (Sec)

DESERT LAND * 3 Classification

It is proper to refuse to classify land as suitable for desert land entry where no adequate showing has been made that water is available for reclamation of the land, and where the mere allegations of the applicants as to the existence of underground water on nearby lands are not documented with proof of the existence of a well, or its depth, volume of discharge or the area under cultivation on the nearby lands.

Merwin Donald McKinlay et al., Los Angeles 0134103 etc. (March 13, 1959)

RO

In reply refer to:
Los Angeles 0134103
0134105
0134544
0134545
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 13, 1959

Certified Mail
Return Receipt Requested

DECISION

Merwin Donald McKinlay	:	Desert Land Applications
Gordon McKinley McBride	:	Special Land-Use Permit Applications
Everett Douglas McKinlay	:	

Acting Manager's Decisions Affirmed

The above named parties have appealed from decisions of the Acting Manager which rejected their desert land and special land-use permits applications * for the stated reason that underground water is not available in sufficient quantities to reclaim the land applied for.

The appellants contend that the land is suitable for agriculture; that there is a water well located approximately 100 yards from the land sought; and that there is agricultural land four miles from the area. These contentions, however, without evidence as to the existence of the well, its depth, volume of discharge of the well, or evidence as to the area under cultivation, types of crops or the cost of reclamation, is not sufficient to overturn the classification of the land as not suitable for the production of agricultural crops. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The rejection of the applications was based on an area classification report, dated April 5, 1956, which shows that an investigation of the lands in issue, and other lands in the vicinity, disclosed that there is an insufficient quantity of underground water in the area for irrigation purposes. The report of field investigation discloses that there is no development of water in the area, and that the Ground Water Branch of the Geological Survey, Department of the Interior, and the California Division of Water Resources have placed the area in a very doubtful position as to water development possibilities.

---

* Special land-use permit applications, Los Angeles 0134544 and 0134545, were filed by Merwin D. McKinlay and Everett D. McKinlay, respectively, requesting permission to drill an exploratory well.

The question in issue is therefore one of proper classification, and the appellants have submitted no positive and substantial evidence that the classification is erroneous. To justify a classification of land as suitable for desert land entry, there must be a showing that water is available to the land for its reclamation. Walter E. Scott, A-27293 (June 21, 1956). On the basis of the evidence in the record, it does not appear that the appellants have overcome the adverse classification, and there is no evidence in the record to show that the classification is erroneous. Mary Refugio Jackson et al., supra. Furthermore, the report of field investigation indicates that the lands in issue are close to the Shadow Mountains, and that any water in the area would be of a highly cemented nature due to the limestone content of the mountains. This would result in low producing wells.

Accordingly, the decisions of the Acting Manager are affirmed.

Messrs. Merwin Donald McKinlay, Gordon McKinley McBride, and Everett Douglas McKinlay are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

GH Dixon

Enclosure

DISTRIBUTION:

Mr. Merwin Donald McKinlay (Certified Mail)
Mr. Gordon McKinley McBride (Certified Mail)
Mr. Everett Douglas McKinlay (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

50991

Appeal to Sec. affirmed A-28089 8-25-59 (Sec)

DESERT LAND * 3 Classification

PUBLIC LANDS * 8 Special Land-Use Permit

It is proper to refuse to classify land as suitable for desert land entry where no adequate showing has been made that water is available for reclamation of the land.

Virginia M. Ohrt et al., Los Angeles 0126217, etc. (March 18, 1959)

20

In reply refer to:

Los Angeles 0126217
0136835
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Virginia M. Ohrt Marie L. Jenkins	:	Desert Land Applications

Manager's Decisions Affirmed

The above parties have appealed from decisions of the Manager rejecting their desert land applications for the stated reason that the underground water is not available in sufficient quantities to reclaim the land applied for.

The rejection of the applications was based on an area classification report, dated December 16, 1955, which shows that an investigation of the lands in issue, and other lands in the vicinity, disclosed that there is an insufficient quantity of underground water in the area for irrigation purposes.

The records show that an exploratory test well drilled in the area under special land-use permit, Los Angeles 0135810, failed to provide evidence of sufficient water from underground sources to effectively irrigate and develop lands sought under the Desert Land Act. However, in their appeals the appellants state that there are a number of producing water wells in the area, and that their applications should not be rejected on the basis of a single test well. They contend that there is sufficient underground water for reclamation purposes in the lands applied for, and request that special land-use permits be issued them to drill a test well to prove the availability of water for agricultural purposes.

In view of the findings of the field examination it would appear that the contentions of the appellants are not sufficient to establish that the classification of the land as unsuitable for desert land

entry is erroneous. Before land may be classified for desert land entry, it must be shown that water is available for the reclamation of the land. Andrew T. Johnson et al., A-27305 (September 25, 1957). On the basis of the evidence in the record, it does not appear that the appellants have overcome the adverse classification, and there is no evidence in the record to show that the classification is erroneous. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

The question in issue is one of proper classification and the appellants have submitted no positive and substantial evidence that the classification of the lands as not suitable for desert land entry is erroneous. The appellants' applications were properly rejected. June C. Keane, A-27847 (February 17, 1959).

The decisions of the Manager are affirmed and the requests for special land-use permits are denied.

The appellants have requested a hearing. However, a hearing is not conducted as a matter of course to determine the proper classification of the land but is held only if there is reasonable likelihood that it would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews et al., 64 I.D. 9 (1957). We believe the evidence in the records is sufficient to decide the issues. Therefore, the requests for a hearing are denied.

Mrs. Virginia M. Ohrt and Mrs. Marie L. Jenkins are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B Beeals

Enclosure

DISTRIBUTION:

Mr. Wm. Blair Dalbey, Attorney for appellants (Certified Mail)
Mrs. Virginia M. Ohrt (Regular Mail)
Mrs. Marie L. Jenkins (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

50991

appeal to Sec
affirmed A-28096 10-19-59
LO (Sec)

DESERT LAND * 2 Application

Lands within a reclamation withdrawal are not subject to desert land entry and applications filed while the withdrawal is in force will be rejected.

Ernest R. Brassell et al., Los Angeles 0155851, etc. (March 19, 1959)

LO

In reply refer to:

Los Angeles 0155851, etc.*

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 19, 1959

Certified Mail
Return Receipt Requested

DECISION

Ernest R. Brassell et al.*	:	Desert Land Applications

Decision of the Chief, Land Adjucication Unit, Affirmed

Ernest R. Brassell and thirty five others listed on Appendix "A" attached have appealed from a decision of the Chief, Land Adjudication Unit, which rejected their desert land applications because the lands are under reclamation withdrawal and are not subject to appropriation under the Desert Land Act.

The record shows that the lands were withdrawn under first form reclamation withdrawal by letter "F" of June 22, 1920, for reclamation purposes. The withdrawal remains in force and effect. The Department has consistently held that lands so withdrawn are not subject to desert land entry. Romayne Goldsmith et al., A-26388 (July 29, 1952) and that applications for such lands must necessarily be rejected. Alma Everett Morris et al., A-27235 (December 12, 1955).

The appellants in effect request that their applications be suspended pending restoration of the lands to entry. However, an application filed at a time when the land is withdrawn from entry must be rejected and may not be held undetermined pending restoration of the withdrawn land. W. C. Dalzell, A-26346 (March 28, 1952).

The appellants have requested a hearing. Since the official records clearly show, and the appellants concede that the lands are withdrawn, as a matter of law the rejection of the applications was required. In the circumstances a hearing is not warranted and the request for a hearing is denied. Cf. Clear Gravel Enterprises, Inc., 64 I.D. 210, 213 (1957).

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* For a list of the applicants and the respective land office serial numbers involved, see Appendix "A".

Therefore, the decision of the Chief, Land Adjudication Unit, was correct and it is hereby affirmed.

Ernest R. Brassell and the other 35 applicants listed on Appendix "A" attached are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney (Certified Mail)
Each Applicant listed on Appendix "A" (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

A P P E N D I X "A"

Serial No.	Applicant
Los Angeles	
0155851	Ernest R. Brassell
0156785	Allan Harvey Altschuler
0156787	Thomas Eugene Barringer
0156788	Mary C. Barringer
0157246	Jean B. Wolff
0157901	Julius Frank
0157902	Ruth Y. Frank
0157968	Pearl Schwartz
0157969	Thyrus F. Cory
0158089	Andrew Popson
0158090	Elizabeth N. Zwolinski
0158145	Charles R. Wagner
0158776	Mahala W. Halmrast
0158965	Margaret Hinkson
0158966	Max M. Simon
0158976	Marjery Nixon
0159005	Jean Glauser
0159020	Carl Schiro
0159021	Francis A. DeVine
0159138	Estur H. Malinoff
0159285	Robert F. Robinson
0159339	Rolla W. Hinkson

Serial No.	Applicant
Los Angeles	
0159402	Mike L. Tiano
0159460	Charles Tenopir
0159774	Earl Thomas Rinaman
0159886	Mike Schamber
0159937	Joseph J. Candee
0159938	Florence R. Candee
0159939	Sidney S. Guthman
0159964	James Ganzel Hackman
0159965	Thomas James Brown
0160042	Robert Maurice Rittenberg
0160437	Dennis M. Boyle
0160476	Leland Springer Mason
0160598	James M. Knopp
0160684	Paul Heinrich Scheele

50991

appeal to Sec
affirmed A-28088
11-17-59

L(Sec)

DESERT LAND * 1 Generally
* Applications

PUBLIC LANDS * 3 Boundaries and Surveys

Applications for entry under the Desert Land Act must be rejected where the land applied for is unsurveyed.

Wilson Thomas Corwin et al., Los Angeles 0160864, etc. (March 25, 1959)

LO

In reply refer to:

Los Angeles 0160864
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 25, 1959

Certified Mail
Return Receipt Requested

DECISION

Wilson Thomas Corwin	:	Desert Land Applications
Thomas Walter McBeath	:	

Decision of the Manager Affirmed

The above parties have appealed from a decision of the Manager rejecting their desert land applications for lands in secs. 15 and 21, T. 1 S., R. 22 E., S.B.M., California, for the reason that the land is unsurveyed.

A check of the records in the Bureau disclosed that the lands applied for are unsurveyed. The Desert Land Act authorizes the entry, by qualified persons, of irrigable, unreserved, and unappropriated surveyed public lands in California and several other western states (43 U.S.C., 1952 ed., sec. 326; 43 CFR 232.3).

Public lands are generally not subject to disposal until surveyed, and they are not considered surveyed until all of the lines have been run in the field, the township, sections, and quarter sections marked on the ground, and all other conditions have been met as to filing and approval of plats of survey. Cf. Cox v. Hart, 260 U.S. 427 (1922). In Anderson v. State of Minnesota, 37 L.D. 390 (1909), the Department stated that public lands are not surveyed until the approved plat of survey is officially filed and approved.

Therefore, as there is no authority to allow the entry of unsurveyed lands, the appellants' applications were properly rejected. Harry B. Groos, A-26336 (March 14, 1952).

Accordingly, the decision of the Manager is affirmed.

Messrs. Wilson Thomas Corwin and Thomas Walter McBeath are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Wilson Thomas Corwin (Certified Mail)
Mr. Thomas Walter McBeath (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

50991

LOC(Sec)

DESERT LAND * 2 Application

PUBLIC LANDS * 7 Withdrawals (First Form Reclamation)

VETERANS * 2 Veterans' Preference

Land included in a reclamation withdrawl is not subject to desert land entry unless and until the withdrawal is revoked. Applications filed while the withdrawal is in effect will be rejected. The land, if restored, would be subject to veterans' preference.

Herbert S. Miller, Los Angeles 0157644 (March 27, 1959)

In reply refer to:
Los Angeles 0157644
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 27, 1959

Certified Mail
Return Receipt Requested

DECISION

Herbert S. Miller : Desert Land Application

Decision of the Chief, Land Adjudication Unit, Affirmed

Herbert S. Miller has appealed from a decision of the Chief, Land Adjudication Unit, which rejected his desert land application because the land is under reclamation withdrawal and is not subject to appropriation under the Desert Land Act.

The record shows that the land was withdrawn under first form reclamation withdrawal by order of October 22, 1920, for reclamation purposes. The withdrawal remains in force and effect. The Department has consistently held that land so withdrawn is not subject to desert land entry Romayne Goldsmith et al., A-26388 (July 29, 1952) and that applications for such land must necessarily be rejected. Alma Everett Morris et al., A-27235 (December 12, 1955). Therefore, the decision of the Chief, Land Adjudication Unit, was correct and it is hereby affirmed.

The appellant alleges that the lands are no longer required for reclamation purposes. This decision is without prejudice to the appellant's filing a petition for the restoration of the land to entry with the Bureau of Reclamation. In the event it should be decided by that Bureau to release the land in question and it is restored to entry by the Bureau of Land Management the appellant would not have any preference right to enter the land on the basis of his present application. George D. McGhee et al., A-26325 (February 15, 1952). In such event the land would be subject to the provisions of section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., sec. 282) which accords to honorably discharged veterans of World War II, the Korean conflict, and others a preference right of 90 days to file applications under the homestead or desert land laws or under the small tract act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a) for the land restored from withdrawal.

Mr. Miller is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as

amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Herbert S. Miller (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

50991

Appeal to Sec
affirmed A-28149 1-15-60
LO (Sec)

DESERT LAND * 3 Classification

PUBLIC LANDS * 8 Special Land-Use Permit

Desert land applications as well as applications for special land-use permits filed for the purpose of drilling wells to explore for water to make the showing as required by the regulation in 43 CFR, 1954 ed., 232.14 as to water supply are properly rejected where the Department of the Army reports that the lands are contaminated with unexploded mines, bombs, shells, and other missiles which would make the construction of irrigation works and cultivation of the lands involved hazardous. Such lands are properly classified as not suitable for desert land entry.

Hildreth M. Doyle et al., Los Angeles 0123493 (April 10, 1959)

RO

DESERT LAND * 3 Classification

PUBLIC LANDS * 8 Special Land-Use Permit

Desert land applications as well as applications for special land-use permit filed for the purpose of drilling wells to explore for water to make the showing as required by the regulation in 43 CFR, 1954 ed., 232.14 as to water supply are properly rejected where the Department of the Army reports that the lands are contaminated with unexploded mines, bombs, shells, and other missiles which would make the construction of irrigation works and cultivation of the lands involved hazardous. Such lands are properly classified as not suitable for desert land entry.

Hildreth M. Doyle et al., Los Angeles 012394 (April 10, 1959)

In reply refer to:
Los Angeles 0123493 etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1959

Certified Mail
Return Receipt Requested

DECISION

Hildreth M. Doyle et al. 1/	:	Desert Land Applications

Decision of the Chief, Lands Adjudication Unit Affirmed

Hildreth M. Doyle and ninety nine others have appealed from a decision of the Chief, Lands Adjudication Unit which rejected their desert land applications and an application for special land-use permit, Los Angeles 0155429, of Caryl C. Sanborn because the lands under application are contaminated with unexploded mines, bombs, shells, and other missiles.

The decision of the Chief, Lands Adjudication Unit was based upon a report of the Corps of Engineers, Department of the Army, that the surface of the lands has been examined and cleared of all explosive materials reasonably possible to detect. However, the report also states that the lands may still contain unexploded mines, bombs, missiles, and other explosive materials which constitute a hazard to life and property. Accordingly, the Corps of Engineers has advised against any subsurface use of the lands until such time as the lands are completely decontaminated. There are no plans for decontaminating the lands in the foreseeable future.

The Department has consistently held that an application or petition for classification of public lands secures no right in the applicant other than the right to have his application duly considered John R. Ross et al., A-27259 (March 12, 1956); and that public lands are not subject to disposal until classified as suitable for disposal and opened to entry. Nelson A. Gerttula, 64 I.D. 225 (1957). Moreover, the decision as to whether the lands will be classified as suitable for desert land entry, or for some other type of disposal, or not at all, depends upon whether it would be in the public interest. Cf. Ernest C. De Ford et al., A-26591 etc. (February 6, 1953); Nelson A. Gerttula, supra.

1/ The names of the applicants involved and the corresponding Land Office serial numbers in each case are listed on Appendix "A" attached.

It appears evident from the record that the development of irrigation works and cultivation of the lands such as would be required to comply with the final proof requirements of the Desert Land Act would be hazardous at this time. Therefore, we believe that the lands could not be properly classified as suitable for desert land entry. 2/ The appellants have submitted no substantial evidence to show that the classification of the lands as unsuitable for desert land entry is in error. It is therefore concluded that the decision of the Chief, Lands Adjudication Unit was correct, and it is hereby affirmed. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

Certain of the appellants have requested a hearing. However, hearings in cases of this type are not held as a matter of course but would represent extraordinary proceedings. Margaret A. Andrews et al., 64 I.D.9(1957). Appellants have made no persuasive showing that a hearing would develop any new facts which would be persuasive of the proper classification of the land. We feel that the present record is sufficient to properly decide the issues. Therefore, the request for hearing is denied.

Hildreth M. Doyle and the other appellants listed on Appendix "A" attached are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Weed

Acting Director

Attachments

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney at Law (Certified Mail)
Mr. John M. Ennis, Attorney at Law (Certified Mail)
Each applicant listed on Appendix "A" (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

2/ Since the above facts are sufficient for the rejection of the applications considered in this decision it is not necessary at this time to consider whether the applications meet the requirements of the regulation 43 CFR, 1954 ed., 232.13 and 232.14 and whether absent these facts the lands would be otherwise suitable, for desert land entry.

Appendix "A"

Name	Serial No. (Los Angeles)
Hildreth M. Doyle	0123493
Emma M. Burger	0130556
Earl Edward Burger	0130559
Hugh Charles Smith	0146552
Margaret W. Smith	0146553
Janice S. Nisson	0146555
Georgia R. Williams	0146640
Everett L. Martin	0146667
Elizabeth S. Martin	0146668
Robert J. Heinz	0146669
Katharine B. Heinz	0146670
Bernard J. Heinz	0146671
Jack H. Evans	0146672
Geraldine G. Evans	0146673
Eunice Williams Heinz	0146848
Thomas F. Bevins	0146851
Stanley Vaughn Hanson	0146852
Myrtle L. Leffler	0147153
Clayton John Leffler	0147154
Frank (NMI) Costa	0148281
Mary Camen Ofria	0148282
Gloria Marie Ofria	0148283
Russell Rosario Ofria	0148286
Morton Debs Schwartz	0148287

Appendix "A"

Name	Serial No. (Los Angeles)
Tony Amato	0149082
Charles Sandrini	0149084
Esmond Everett Rich	0149323
Paul Wesley Rich	0149324
Louise E. Lewis	0149325
Mrs. Cecil Bernice Rich	0149326
Russell C. Slaybaugh	0149445
Marian E. Slaybaugh	0149446
Caryl Charles Sanborn	0149448
Charlotte Belle Sanborn	0149450
Elizabeth (NMI) Ruddell	0149475
Gerald Ralph Ruddell	0149476
Betty Lou Norton	0149477
Max Eugene Norton	0149478
Leslie J. Erickson	0149533
James E. Amato	0149662
Robert W. Lloyd	0149716
Marilyn P. Toelle	0149939
Edward W. Wilcox	0149962
Henry F. Black	0149963
Edgar J. Craigo	0149965
Elaine Borchard	0151296
Albert Borchard	0151297
Betty Lou Uehlein	0151298

Appendix "A"

Name	Serial No. (Los Angeles)
Bernardino B. Durando	0151299
Art John Durando	0151300
Willard W. Terry	0149320
George Edward Uehlein	0151301
Joanne B. Uehlein	0151302
D. Mitzie Uehlein	0151303
Juanita G. Hatchel	0151344
Charles J. Carr, Jr.	0151360
Bennett R. Erickson	0154389
Binnie Williams Dixon	0155283
Joe Hammond, Jr.	0155410
Johnny C. Powell	0155700
Lela Joy Gillingham	0156665
Isabel Anderson Sexton	0156666
Jacque Maclean Sexton	0156667
Sanford Michael Arvin	0157540
Frank Joseph Pedroncelli	0158006
Charles Edward York	0158011
Dale Homer Robinson	0158294
Mrs. Martie Elkins Robinson	0158295
Patricia Lyman Paulus	0158298
John Lewis Paulus	0158301
Helen Gertrude Honus	0158305
Lawrence Allen Pratt	0158307
Helen Tullar Pratt	0158308

Appendix "A"

Name	Serial No. (Los Angeles)
Edna May Brockett	0158309
Karolyn Wilson Lewis	0158310
James Coleman Lewis	0158311
Arthur Edwin Van Leuven	0158312
Frank Deshler, Jr.	0158315
Lois Alma Deshler	0158316
John Franklin Deshler	0158317
Patricia Ann Deshler	0158318
William Maurice Patten	0158319
Margaret Frances Patten	0158320
Bessie Lee Van Leuven	0158321
William Wesley Robinson	0158324
Cora Alice Moore Robinson	0158325
Lilla Irving Lewis	0158328
Peter Maule Lewis, M.D.	0158329
Max Perkins	0158429
Thelma Perkins	0158430
Blanche Margarette Hickman	0158659
Joseph John Honus	0158306
Great West Einboden	0158851
Natalie S. Witmer	0159295
William B. Witmer	0159296
Mrs. Ernesta C. Sbicca	0159310
Mrs. Virginia K. Blodget	0159406

Appendix "A"

Name	Serial No. (Los Angeles)
Herbert H. Blodgett	0159407
Donald John Corsaro	0159429
Joseph D. Corsaro	0159430
Caryl C. Sanborn	0155429

52694

LO(Sec)

DESERT LAND * 3 Classification

A desert land application is properly rejected where the soil is unfit for irrigated crop production.

Where land applied for under the Desert Land Act is classified as unsuitable for agricultural purposes because the soil is rocky, sandy, and subject to wind erosion if cultivated, the classification will not be disturbed in the absence of positive and substantial evidence that the classification is erroneous.

Arthur Gootkin Lawrence, Los Angeles 0127545 (June 15, 1959)

RO

In reply refer to:
Los Angeles 0127545
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 15, 1959

Certified Mail
Return Receipt Requested

DECISION

Arthur Gootkin Lawrence : Desert Land Application

Decision of the Chief, Land Adjudication Unit, Affirmed

Arthur Gootkin Lawrence has appealed from a decision of the Chief, Land Adjudication Unit, which rejected his desert land application because the land had been classified as not suitable for desert land entry.

The land is located in the western part of the Coachella Valley, about 10 miles from the town of White Water, Riverside County, California. The field examination disclosed that (1) the soil is composed of almost pure sand and rock; (2) the land is located in an extremely windy area and the possibility of the land being cultivated by irrigation is practically nil, for reason of sand movement caused by the high winds; (3) irrigation wells have not been developed in the area; and (4) the area is subject to severe sand storms.

Lands sought to be acquired under the Desert Land Act must first be classified as suitable for desert land entry, and land which may be opened to such entry must be land which can be reclaimed through irrigation to produce an agricultural crop. It is proper to refuse to classify lands for desert land entry where it is shown that the soil of the lands applied for is of such a character that the lands are unfit for cultivation. Ruby D. Moore et al., 64 I. D. 137 (1957).

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as not suitable for the production of agricultural crops is in error. In Anderson O. Whitener, A-27626 (December 3, 1958), the Department held that an applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error.

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Lawrence R. Aker, A-27815 (February 13, 1959).

Accordingly, the decision of the Chief, Land Adjudication Unit, is affirmed.

Mr. Arthur Gootkin Lawrence is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dixon

Enclosure

DISTRIBUTION:

Mr. Arthur Gootkin Lawrence (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

56242-59

LO (Sec)

DESERT LAND * 2 Application
* 3 Classification

PUBLIC SALE * 3 Classification

A desert land application is properly rejected where the greater part of the land applied for is in rough, hilly, steep, mountainous terrain, which is unsuitable for agricultural purposes, and the tract has been classified as suitable for disposal under the public sale law.

Where an isolated tract of land which is of doubtful value for agricultural purposes can be sold at a price in excess of the price of desert land, it is in the public interest to dispose of the land at a public sale as an isolated tract.

Thomas Joseph Buchanan, Los Angeles 0107430 (June 15, 1959)

LO

In reply refer to:

Los Angeles 0107430
0120272
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 15, 1959

Certified Mail
Return Receipt Requested

DECISION

Thomas Joseph Buchanan	:	Desert Land Application
	:	
	:	

Decision of the Manager Affirmed

Thomas Joseph Buchanan has appealed from a decision of the Manager which rejected his desert land application for the reason that the greater part of the land applied for is in rough, hilly, steep, mountainous terrain, which is unsuitable for agricultural purposes. The land was classified as suitable for disposal at public sale pursuant to application, Los Angeles 0120272, of Francisco Picone.

The land is an isolated tract located about 11 miles southeast of Llano in Los Angeles County, California. The report of field investigation discloses that the land lies on the rough, foothills of the San Gabriel Mountains; that the greater portion of the tract is composed of steep, mountainous and rough, hilly terrain which is unsuitable for farming purposes; and that only about 4 to 5 acres of the 80.44 acres applied for is fairly level, but would not be feasible for agricultural development.

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as not suitable for desert land entry is erroneous. In Anderson O. Whitener, A-27626 (December 3, 1958), the Department held that an applicant for public lands who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error.

The Department has consistently held that desert land applications for lands having unsuitable soils and topography for irrigation development are properly rejected. Ruby D. Moore et al., 64 I.D. 137 (1957). In any event, the question whether the land is suitable for cultivation does not of itself determine under which of the public land laws disposition of the land should be made. Gerald Barbee Wilbanks, A-24550 (July 29, 1947). The land should be disposed of under the law which best serves the public interest.

Furthermore, where an isolated tract of land which is of doubtful value for agricultural purposes can be sold at a price in excess of the price of desert land, it is in the public interest to dispose of the land at public sale as an isolated tract. Ernest C. De Ford et al., A-26591 (February 6, 1953).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. Cf. Jerry Lee Ford, BLM 045072 (Fla.) February 13, 1959).

Accordingly, the decision of the Manager is affirmed.

Mr. Thomas Joseph Buchanan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Buchanan, then the adverse party to be served is:

Mr. Frank Picone
10065 Pangborn Avenue
Downey, California

For the Director:

Enclosure

DISTRIBUTION:
Mr. Thomas Joseph Buchanan (Certified Mail)
Mr. Francisco Picone (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

56242-59

LO(Sec)

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence of a water supply available for the irrigation of the land and all of the water supplies within the drainage area are already being put to beneficial use or are needed for other purposes.

PUBLIC LANDS * 8 Special Land-use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record reveals that all of the water within the drainage is already being put to beneficial use.

Frances Elizabeth Cain et al., 0145092 etc. (June 18, 1959)
(Approved June 24, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0145092 etc. 1/
0149379 etc. 2/
0158644 etc. 3/
0140202 etc. 4/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 18, 1959

DECISION

Frances Elizabeth Cain et al. 1/	:	
Jess M. Squire et al. 2/	:	Desert Land Applications
Hubert Nelson Baldwin et al. 3/	:	
Sadelene B. Barrett et al. 4/		

Decisions of the Manager Affirmed

Frances Elizabeth Cain and the other applicants listed on Appendices "A", "B", "C" and "D" appealed from decisions of the Manager which rejected their desert land applications because (1) the applications were not accompanied by proper showings as required by the regulation 43 CFR, 1954 ed., Part 232; and (2) the lands cannot be properly classified for desert land entry because there is insufficient water available for the irrigation of the lands involved on a sustained basis.

The Departmental regulation 43 CFR, 1954 ed., Part 232 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement in addition to the map as may be required to demonstrate that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means.

1/ The lands involved in these applications are located within the Mojave River Drainage, California and outside the "Zone of influence" of the Mojave River. For the names of applicants and the corresponding land office serial number in each case see Appendix "A".
2/ The lands involved in these applications are located in Rice Valley, California. For the names of applicants and land office serial numbers see Appendix "B".
3/ The lands involved are located in the Upper Kingston Valley, California. For the names of applicants and land office serial numbers see Appendix "C".
4/ The lands involved are located in Chuckawalla Valley, California. For the names of applicants and land office serial numbers see Appendix "D".

However, irrespective of the issue of the sufficiency of the showings accompanying the applications, the lands could not be properly classified as suitable for desert land entry because there is no water available for irrigation. Ruby E. Huffman et al., 64 I.D. 57 (1957); Walter E. Scott, A-27293 (June 21, 1956).

The circumstances of water supply for each of the areas involved in Appendices "A", "B", "C", and "D" are enumerated below.

Appendix "A" (Mojave River Drainage)

The applications involve lands located within the Mojave River Drainage and outside the "zone of influence" of the Mojave River. The circumstances of water supply available for the irrigation of additional lands in the Mojave River Drainage has been the subject of a number of detailed investigations and studies by personnel of this Bureau. These investigations reveal that ground water in amounts required for irrigation is available only to those parts of the valley that are influenced by the underflow and leakage of the River. The classification holds that no further applications for desert land or homestead entry should be allowed for lands lying outside the "zone of influence" of the Mojave River because all of the available water in the basin is already being put to beneficial use for the irrigation of lands located within the "zone of influence" of the Mojave River or for industrial or other purposes. This classification has been upheld by the Department in a number of cases involving lands within the Mojave River Drainage. See Horace H. and Norma J. Neely, A-27890 (April 24, 1959) and cases cited. Also see Adeeb G. Thomas, A-27818 (February 17, 1959).

The appellants assert that there are a number of wells in the area of varying sizes and depths. However, they have not shown that water in amounts required for irrigation is available from any wells with the exception of certain wells located within the "zone of influence" of the Mojave River where there is a known water supply. Nor are the appellants' assertions that the Mojave River is underlain by a "vast underground lake" persuasive of the issue of an irrigation water supply as the reports referred to by the appellants are newspaper accounts which upon investigation do not reveal facts which would support the belief that water is available for the irrigation of the lands involved in the present appeals.

Appendix "B" (Rice Valley)

Field investigation and study of the drainage area indicate that there is insufficient water available for the irrigation of agricultural crops on a sustained basis. This conclusion is based on studies of the geological features of the entire drainage area as well as records of stock water and domestic wells and a long history of unsuccessful

attempts to develop irrigation wells in Rice Valley. The appellants have called attention to five water wells in the area. However, three of these are domestic or livestock wells. The well located on sec. 13, T. 1 S., R. 18 E., is reported to have an output of 260 gallons per minute. However, this amount would be adequate for the irrigation of no more than 30 acres. No production is reported for the other wells. Moreover, the well reported to produce 260 gallons of water per minute is located one or more townships to the west of the lands under application and is not persuasive evidence that water is available to the lands in issue. Cf. Dottie J. Beck et al., A-27884 (March 5, 1959).

Appendix "C" (Upper Kingston Valley)

Investigation of the area indicates that there is insufficient water in the area for irrigated crop production. This conclusion is based upon geological studies by the Geological Survey and field investigation of the land by this Bureau. There are no irrigation wells in the Upper Kingston Valley. The only deep well produces no more than 24 gallons of water per minute which is insufficient for irrigated crop production. The appellants rely upon water production from wells in Mesquite Valley some 17 miles distant from the lands here involved. There is no information in the record including the representations in the present appeals to indicate that water conditions in the Upper Kingston area are in any way comparable to water conditions in Mesquite Valley. Cf. Dottie J. Beck et al., supra. The conclusion reached in the geological report accompanying the appeals that there is an annual recharge to the ground water table of approximately 8,000 acre feet per annum appears to be based primarily upon data presented in Geological Survey reports that have been fully investigated and considered by classification personnel of this Bureau. Eight thousand acre feet of water would be adequate for the irrigation of no more than 2,000 acres of land or about six 320 acre desert land entries. Moreover, to reach this conclusion it is necessary to assume that the 8,000 acre feet purportedly available could be recovered at six isolated points within the drainage area which covers three to four townships.

The applicants have made no persuasive showings either in their applications or their appeals that there is water available in the drainage area surplus to existing needs Cf. William E. Gelder, A-27084 (April 12, 1955); Dottie J. Beck et al., supra., or that water is available in amounts required for irrigation. Ruby E. Huffman et al., supra.

Appendix "D" (Chuckawalla Valley)

Geological information indicates that Chuckawalla Valley is not an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the Valley and drains into the Colorado River. The appellants have referred to a number of wells in the valley

and have submitted water production data concerning nine of these which they allege together produce about 38 second feet of water. However, the record reveals there are over 20,000 acres of State and privately owned lands within Chuckawalla Valley of which approximately 9,000 acres are irrigable if adequate water is available. Moreover, there are 40 or more allowed but undeveloped and unpatented desert land entries in the valley involving 12,000 or more acres. The irrigable State and privately owned lands together with the pending desert land entries, which if developed for irrigated crop production, would require a total of about 375 second feet of water.

Though the appeals are accompanied by statements and reports of geologists which state that there is an extensive alluvial fill within Chuckawalla Valley of a proper porosity to retain considerable amounts of water, they have made no showing as to the annual rate of recharge to the drainage basin. Unless it could be shown that the rate of recharge to the drainage basin exceeds 375 second feet of water no further desert land entries could be properly allowed. Cf. Horace H. and Norma J. Neely, supra.

The appellants have made no persuasive showings that water is available in the drainage area surplus to existing needs Cf. William E. Gelder, Pearl Y. Hogle et al., A-27889 (April 23, 1959) or that water is available in amounts required for the irrigation of the lands under application. Walter E. Scott, supra. 5/

Conclusion

Certain of the appellants allege that they have not been permitted to go upon the land to explore for water. However, the record indicates there is little prospect of obtaining a well or wells which would produce sufficient water for the irrigation of the lands involved and that any water available is already being put to beneficial use. Therefore, a special land-use permit to explore for water and drill a well could not be properly allowed. This view is consistent with classification procedures in prior cases involving the same issues. See Dottie J. Beck et al., supra.; also see Horace H. and Norma J. Neely, supra., and cases cited.

The fact that entrymen would have a right to the use of underlying ground waters is not persuasive evidence of error in the classification. The Department has held in numerous cases that unless an actual water supply is available for the irrigation of the lands that they cannot be properly classified as suitable for desert land entry. Ruby E. Huffman, supra.

5/ The Scott Case also involved lands in Chuckawalla Valley.

Some of the applicants allege that their applications should not have been rejected because the lands had been classified as suitable for desert land entry in the past. However, the fact that certain of the lands may have been classified as suitable for desert land entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). There is nothing binding about a classification. While it may represent the considered judgement of the classifier based upon the evidence available at the time of the classification, it is subject to revocation at any time or to revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954).

As to appellants' request for a hearing, a hearing is not held as a matter of course in adjudicating public land matters or in classifying public lands. Cf. Leonard R. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desire. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing and extension of time is denied. The decisions of the Manager are affirmed.

Charles P. Mead

June 24, 1959 Acting Director

Approved:

Assistant Secretary of the Interior

DISTRIBUTION:
Mr. Adolph Moskovitz, Attorney at Law (Regular Mail)
Mr. Irving H. Brott, Attorney at Law (Regular Mail)
Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Mr. William J. Tierman, Attorney at Law (Regular Mail)
Law Offices of Teague and Dixon (Regular Mail)
Mr. Frank J. Kanne, Jr., Attorney at Law (Regular Mail)
Lev, Lyon, and Witmer, Attorneys at Law (Regular Mail)
Mr. Burke Mathes, Attorney at Law (Regular Mail)
Hon. Thomas H. Kuchel, United States Senate
Hon. Harry R. Sheppard, House of Representatives
Hon. Clair Engle, United States Senate
Hon. James B. Utt, House of Representatives
Each applicant in Appendices "A", "B", "C" and "D" (Regular Mail)
Lands Staff Officer(1)
Appeals List No. 1
CFG

Appendix "A"

Name	Serial No. L.A.
Frances Elizabeth Cain	0145092
Elizabeth Rodda Stull	0145149
George Henry Rodda	0145150
Elizabeth B. Olin	0145269
Gurtha Isabelle Rodda	0145270
Jack Mix, Jr.	0148896
Tse Kiong Sun	0150495
Mildred J. Jong	0150673
Albert L. Shore	0151634
James E. Balash	0151707
James I. Menzies	0151833
Elizabeth E. Menzies	0151832
Bernard D. Stallman	0151866
Lee C. Porter	0151869
Luciana Wilmorth	0151874
Earl E. Waugh	0151877
Lewis I. Brunswick	0151895
Marie Allen Cazaux	0151921
Dorothy K. Shore	0151938
Elsie E. Thompson	0151989
Ruth K. Bandy	0151990
Richard D. Zunker	0152049
Reginald L. Harris	0152050
Anna Dorothy Seay	0152085
Raymond F. Milke	0152110

Appendix "A"

Name	Serial No. L.A.
Alma Milke	0152112
Fred Milke	0152111
Leona Mirth Hanshaw	0152113
Lloyd J. Seay	0152117
Margaret A. Davis	0152119
Dorothy M. Burdue	0152120
Ivah W. Young	0152121
John Burdue	0152122
Ruth Ann Priester	0152123
Robert Allen Betz	0152124
Cecil L. Bandy	0152125
Charles L. Davis	0152132
Gordon H. Steventon	0152136
William E. Reed	0152137
Gilbert G. Ross	0152114
George A. Young	0152138
Jerald A. Lortman	0152146
Shirley R. Lortman	0152147
Sidney L. Golber	0152150
Ruth N. Ross	0152157
Orland R. Hanshaw	0152159
Carson L. Perrin	0152162
Lorna A. Root	0152191

Appendix "A"

Name	Serial No. L.A.
Phylis E. Barcon	0152196
John E. Richardson	0152198
Richard Howard Curtis	0152199
Phil H. Sheridan	0152200
Marilyn J. Henderson	0152235
Charles Thurston Simmons	0152237
Jessie Alice Barman	0152238
Paul A. Corwin	0152242
Raymond Walter Neff	0152262
Ruth Nicholson	0152288
Stephen Rennick	0152289
Irving Cohen	0152290
Murray G. Satterfield	0152335
George R. Sanders, Jr.	0152338
Seymour Radin	0152342
Angel Flores	0152370
Louis Stallman	0152371
Elling Birkenes	0152380
Ruth O. Storck	0152381
Sidney J. Murkin	0152414
Ira R. Ring	0152417
James D. Santomauro	0152447
Frank F. Kalz	0152452
Harold M. Miller	0152453

Appendix "A"

Name	Serial No. L.A.
Louise T. Miller	0152454
Victor Elaine Edlefsen	0152465
Daisy M. Guyer	0152468
Frank W. Guyer	0152467
R. Michael Gilbert	0152485
Carson L. Perrin	0152498
Desert Land & Homesteaders Association	0152515
Thomas Eugene Withers	0152533
Carson L. Perrin	0152549
Ruth Stallman	0152592
Helen (NMI) Kushner	0152703
Abraham Hudosh	0152704
Sol (NMI) Kushner	0152705
Irving H. Brott	0152706
Sam Shoemaker	0153009
Allan E. Cobb	0153150
Virginia R. Cobb	0153151
Raymond L. Reddinger	0153164
Eugen Seyler	0153165
Edward J. Kislan	0153166
Albert Sterkin	0153201
May Jane Sterkin	0153202
Elmer F. Beckstrand	0153220
Joseph B. Kioten	0153253
Robert Leroy Atherton, M. D.	0153391

Appendix "A"

Name	Serial No. L.A.
Francis Wall Marshall	0153392
Ina Ferrin Beckstrand	0153393
Antoinette Grasso	0153979
Rudy Bernard Kipp	0154030
Elberta Mays Kipp	0154031
Norman Marback	0154176
Gordon Laird Bryson	0154420
Ray Glen Mack	0154457
Belle E. Kates	0154485
Nelson Dunner	0154738
Sidney J. Fields	0154853
Max Soloman	0154893
Florence F. Daniels	0155087
Edward L. Juline	0155739
Sara Sawyer	0155767
Otto J. Mack	0155772
Richard Castle	0155848
James Wallace Beazley	0158970
Jacob Raymond Gonzales	0160502
Louis Scialpi	0160796
Tadashi (NMI) Fujihara	0160830
Marian E. Jacobson	0160937
Robert Clifford Mayes	0158651
Thomas John Vierra	0158958

Appendix "A"

Name	Serial No. L.A.
Joyce H. Baker	0158969
John Gaynor Becker	0158212
Robert N. Young	0158441
Ben Myerson	0158623
Eugene Hemstray, Jr.	0158012
Gayle Castle	0158119
Ray J. Castle	0158120
William J. Sellers	0156679
Mildred C. Manooch	0156680
Clifford C. Price	0156714
Vera Price	0156715
Orlo E. Brown, Jr.	0156982
Dwight Bradford	0156821
Dale L. Ward	0156904
Jean P. Brown	0156983
Eleanor J. Sples	0157153
Melvin F. Baker	0157727
Milton Arhold Frieder	0157728
Louis E. Moffman	0157958
Ida Linderman	0156455
Ann Reeves Poulson	0156462
William A. Poulson	0156461

Appendix "A"

Name	Serial No. L.A.
Ralph E. Ward	0156463
Carolyn E. Simmon - nee Wright	0156479
Joseph P. Sandler	0156630
Ruby Matilda De Lamare	0156013
Vernon M. Vannett	0156041
Gaynobelle Reed Vannett	0156042
Robert J. Sarvic	0156075
Robert E. Huffman	0156090
Wayne S. Hunsaker	0156433
William Warren Brine	0156434
Dorothy S. Hutchinson	0155904
Eloah Dawn Backstrand Stevens	0155959
Carol Nan Backstrand	0155960
Dale Fertin Backstrand	0155962
Robert C. Barnett	0152331
Danny L. Henderson	0152332
John J. Kortlander	0152333
Robert F. Maier	0152334
Virginia Stonehill	0152689
Maxine Taylor Peyton	0153309
Arnold Abner Strand	0153311
Percival J. Moore	0153313

Appendix "A"

Name	Serial No. L.A.
Charles K. Hanna	0153314
Charles R. Shuey	0153403
G. Robert Craig	0153976
Sandra L. Rea	0153977
Pearl Power Reynolds	0161349
Elmer J. Freeman	0153401
Delores Lee Freeman	0153402
Robert J. Trainor	0151347
Eva M. Sanfilippo	0151563
Hilda P. Megyesi	0151799
Peter Megyesi	0151802
Helen L. Zurker	0152048
Victoria Furno	0152115
LaVerne B. Crain	0152139
Edwin M. Brenner	0152283
Plum C. Theoming	0152285
Louis C. Theoming	0152286
Katherine M. Justice	0152576
Lawrence E. Overman	0152581
Allen Greenwald	0152582
Bertha J. Pannell	0152584
William C. Pannell	0152585
Levi G. Doughty	0152596
Jewell M. Doughty	0152597
Marilyn J. Withers	0152707

Appendix "A"

Name	Serial No. L.A.
Gladys L. Withers	0152708
Charles J. Fitzgerald	0152729
George F. Dunning	0153981
Gene S. Jantzen	0154595
Zella H. DeWelles	0155671
Roy W. DeWelles	0155672
Rachel E. Ketchum	0155855
Ruth E. Bartholomew	0155889
Bess Rossan	0155950
Mary C. Wallace	0156001
Malvern R. Stevens	0156031
Florence I. Van Zile	0156033
Helen R. Burry	0156035
Bron W. Wallen	0156080
George W. Sawyer	0156631
Edna G. Sawyer	0156632
William J. Snow	0156789
Robert F. Updyke	0158408
Lonnie J. Partin	0158493

APPENDIX "B"

Name	Serial Number Los Angeles
Jess M. Squire	0149379
Adra M. Squire	0149380
Anna K. Squire	0149382
Francis R. Squire	0149383
Maurice H. Smith	0149384
Eugene V. Bachman	0149385
Carmella Giammanco	0149671
Joseph J. Giammanco	0149672
Joseph M. Salamone	0149812
Angeline Salamone	0149813
Marion B. Edmonds	0151328
Lois E. Edmonds	0151329
Jack Hugo Wright Jr.	0151330
Daisy D. Wright	0151331
Vlora Nickel	0151332
Aldvin M. Nickel	0151333
Mary Patsy Jones	0151334
Charles E. Jones, Jr.	0151335
Charlotte M. Edgin	0151336
J. Phillips Edgin	0151337
Wilma Ely	0151338
Hubert L. Hatchel	0151343

Name	Serial Number Los Angeles
Eva L. Herbert	0151361
George F. Herbert	0151362
Charles J. Carr, Sr.	0151363
Phyllis E. Carr	0151364
Wm. G. Carr	0151365
Helen Millhauser	0151384
Royal K. Spradling	0151599
Naomi B. Harris	0152051
Maurice H. Greenwald	0152449
Beth P. Woo	0153139
Richard Antonelli	0153141
Mary A. Fukunaga	0153142
Lucille H. Smith	0155411
William Bradley	0155742
Stana Bradley	0155743
Iavon Williams	0156091
Clark A. Williams	0156092
Odetta Williams	0156154
Roy Scarbrough	0158004
Henry R. Wolcott	0159393
Ralph W. Nylander	0159422
John C. Dunn	0159817
Warren G. Bradley	0159818

Name	Serial Number Los Angeles
Alva L. Erwin	0146660
Arthur M. Fore, Sr.	0146692
John Henry Demaree	0146690
Laura Francis Demaree	0146691
William Samuel Holt	0157785
Lillian Ada Lovett	0146689
Charles E. Fore	0146659
Bill Leonard Demaree	0146503
Ted Fore	0146658
Roy C. Bassett	0155885
Mildred M. Paden	0155943
Arthur Cleveland Paden	0149785
Grace L. Paden	0149736
Joan C. McDaniel	0150199
Chester Dawson	0150200
Samuel Moore	0156023
Daphine Paige	0156022
Louis C. Smith	0155941
Lillie Mae Smith	0155942
Minnie P. Weldon	0150198
John J. Pimentel	0149826
Maude Salley Emberton	0149740
Frank A. Quiroz	0149741
Richard Samorano Encinas	0149735

Name	Serial Number Los Angeles
Roy C. McDaniel	0150201
Henry J. Cloutier	0149814
Sarah L. Incaudo	0150249
Anthony C. Incaudo	0150250
Thomas Grady Harrison	0155153
Ellsworth Gregg Stubbs	0159293
William L. Orcutt	0159331
Magnus R. Wooley	0159350
Leonard Lodgen	0159768
Josephine Soccio	0152611
Mary R. Starrett	0152714
Frederick J. Ayoob	0159318
Eugene R. Kanjo	0159816
Adele Ayoob Saidy	0159336
Gilbert H. Saidy	0159335
Virginia B. Saidy	0159334
Habeeb Abraham Saidy	0159332
Alice Ayoob	0159319
Robert A. Dasch	0146641
Helen L. Dasch	0146642
Roy E. Rich	0149481
Forrest Elmer Rich	0149480
Charlotte Mae Rich	0149479
Harold L. Lewis	0149387

Name	Serial Number Los Angeles
Martha Lavena Rich	0149386
Alicia Lee Stephens	0159063
Thomas F. Stephens	0159062
Henry E. Hartge	0147273
Harry M. Gruwell	0149784
Roger R. Walch	0149737
Joel W. Gruwell	0149739
Lyman D. Griswold	0149825
Olga T. Griswold	0149824
Charlotte D. Walch	0149738
Edward H. Griswold	0149823
Donald R. Emery	0149444

Appendix "B"

Name	Serial No. (L. A.)
Mrs. Ann Munari	0151283
Mr. Albert Munari	0151284
Mr. Dominick Carl Munari	0151312
Mrs. Mary Basso	0151313
Mr. Arthur Chris Basso	0151314
Mr. Frank F. Bottosso	0151315
Mrs. Rose Marie Munari	0151759
Mr. Paul Casella, Jr.	0151884
Mr. Frank Schivo	0152098
Mrs. Shirlee L. Schivo	0152099
Mrs. Phyllis M. Silvestri	0152100
Mr. Vincent Silvestri	0152101
Mrs. Patricia M. Brophy	0152356
Mr. Mike Antonovich	0152357
Mrs. Madeline Miller	0152358
Mrs. Mary C. Camilli	0152362
Mr. George D. Schmidt	0152991
Mr. Paul Camilli	0152363
Mr. George C. Quesada	0153048
Mrs. Edith Zinn Sperzel	0153517
Mr. Gerald A. Jack	0153098
Mr. Geno Munari	0151751

Appendix "C"

Name	Serial No. L.A.
Hubert N. Baldwin	0158644
Greta S. Baldwin	0158645
Herbert Zeitlin	0158743
Henry B. Den Hammer	0158668
Barbara J. Den Hammer	0158669
Martha L. Shetler	0158670
John H. Bunch	0158688
Cressy O. Bunch	0158689
Eula F. Bunch	0158742
Voaid T. Mitchell	0158782
Leo W. Mitchell	0158809
Alexander H. Clarke	0159326

Appendix "D"

Name	Serial No. L.A.
Sadelene B. Barrett	0140202
Daniel V. Tommaney	0140204
Lewis W. Isaak	0140205
Richard B. Weringer	0140207
Richard R. Heber	0140237
Clyde Barbeau	0140239
Harry V. Gordon	0140240
Miles M. Heber	0140241
Gerald O. Lynn	0140306
Barry Dayl	0140307
John L. Turcato	0140309
Robert A. Brown	0140314
Ivon R. Wall	0140316
John J. Brusati	0140318
Leslie C. Coombs	0140319
Addie Coleman	0140321
Robert J. McWherter	0140323
Katherine B. Brusati	0140357
Charles R. Kanne	0140514
Donald F. Goold	0141686
Steve W. Peterson	0141687
Violette E. Clarke	0141737
Harry May	0141938

Name	Serial No. L.A.
Muriel A. Scholing	0143696
Paul R. Scholing	0143697
Roy A. Wheeler	0145037
Anne Wheeler	0145038
Laura M. Hensman	0145601
Edith L. McFarland	0145690
Edith C. McFarland	0145691
Robert J. McFarland	0145757
Robert J. McFarland, Jr.	0145758
David C. Pennington	0145773
Alex Montijo	0145983
Glenn E. Walters	0147281
Norman E. Quier	0148369
Finis G. Brandenburg	0148370
William T. Chandler	0149376
Len A. Chitwood	0149377
Roland W. Maypole	0149658
James I. Valdez	0150019
Herbert W. Griesert	0150244
Harold J. Zimmerman	0151250
William J. Waters	0151252
Gladys J. Zimmerman	0151253
Nezha Haddad	0151255
John E. Lenz	0151401
Hudson D. Wilcox	0151542

Name	Serial No. L.A.
Benjamin F. Harrison	0151543
Burton Benwell	0151703
Orme C. Dempsey	0152270
Wandalee A. Fullerton	0152314
Michael Soccio	0152594
Alex Thompson	0152388
Leo J. Miln	0152390
Lionel A. Ephraim	0152391
Henry W. Ephraim, M.D.	0152392
Ruby L. Bamboles	0152871
Helen D. Sintetos	0152873
Lee K. Olson	0153003
Joan E. Oleson	0153006
Joanne Miner	0153837
Lauren R. Miner	0153838
Ann Miner	0153839
Donald D. Rinker	0153866
J. Lloyd Armstrong	0154362
Constantinos M. Moulis	0154568
John J. Shaw	0154629
Pete Panos	0154750
Frank V. Rathel	0154816

Name	Serial No. L.A.
May E. Rathel	0154817
Annie G. Orr	0154828
Ellen F. Aiello	0154884
James H. Mills	0155301
Harold L. Haskell	0155907
LaVonne I. Barrington	0155911
Frank Barnese	0156336
Leo J. Taylor	0156337
Frank Skrah	0156338
Tina Barnese	0156339
John Aiello	0156346
Henry J. Mello	0156347
George M. Sparrer	0156533
Emma A. Ledman	0156534
Archie T. Ledman	0156535
Ivy R. Hinch	0156960
Helen A. Mello	0156981
Beatrice B. McRobert	0157059
Rose Stack	0157639
James J. Aiello	0157861
Joseph J. Ferraro	0157862
John N. Powell	0157909
William Stack	0158009

Name	Serial No. L.A.
Gerald M. Ballew	0158010
Marguerite N. Powell	0158494
John J. Kolmykoff	0158249
Margaret M. Powell	0158495
Josephine C. Bono	0158629
John D. Bono	0158630
Laura Bono	0158722
Frances Gennaro	0158734
Ida C. Murrill	0158902
Mae F. Hoerning	0158903
Raymond M. Crane	0158906
John J. Murrill	0158904
Arthur W. Crawford	0159035
Marjorie A. Crawford	0159036
Ben Yasuda	0159056
Angelo J. Gennero	0159057
Eva E. Cook	0160865
Clara Mace	0161378
Harold Bell	0161411
Nathan Goldstein	0161447
Kay F. Carroll	0161668
Mathew Nelson	0161669
Robert M. Collins	0161670

Name	Serial No. L.A.
Louise D. Waters	0161692
John G. Buchanan	0161752
Aileen I. Fosnauth	0161753
Henry H. Shawhan	0161800
Ruth L. Buchanan	0161801
Ray F. Berryman	0163047
Dewey E. Brickey	0163048

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RULES OF PRACTICE * 11 Statement of Grounds

Where an appellant states merely that the Manager's decision is in error without pointing out the reasons why the decision is believed to be erroneous, he has failed to state reasons for his appeal as required by the rules of practice and the appeal will be dismissed.

Ruth A. McCarthy et al., Los Angeles 0151758, etc. (June 18, 1959)
(Approved June 24, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0151758 etc.*
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Ruth A. McCarthy et al.* : Desert Land Applications*
:
:

Appeals Dismissed

Ruth A. McCarthy and the other applicants listed on Appendix "A" attached have appealed from decisions of the Manager which rejected their applications because the applications were not accompanied by proper showings that water is available for the irrigation of the land, that the land is of a character susceptible of irrigation development, or by proper plans of the proposed irrigation development as required by the regulation 43 CFR, 1954 ed., 232.14.

The appellants allege no specifications of error in the Manager's decisions. They merely assert that they have the financial means to develop the land, or that they wish to acquire title to it, and some merely state that they wish to appeal.

The Department has consistently held that an appeal is properly dismissed where the appellant fails to assign any specification of error in the decision appealed from. Harry Frank Boyer, A-27012 (June 29, 1954). An appellant cannot shift to the Department the burden of proving whether an error has been committed. James L. Knight, A-27374 (September 19, 1956). Where an appellant states merely that there has been an error committed, without pointing out wherein the decision appealed from is believed to be erroneous, the appellant has failed to state reasons for his appeal, as required by the rules of practice, and the appeal will be dismissed. Duncan Miller, 65 I.D. 290 (1958).

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* The names of the applicants and the corresponding land office serial numbers in each case are listed on Appendix "A" attached.

Accordingly, the appeals must be treated as though no statements of reasons have been filed within the time permitted, and the appeals dismissed summarily. (43 CFR 221.98).

Charles P. Brand

Acting Director

Approved: July 24, 1959

Assistant Secretary of the Interior

DISTRIBUTION:
Each appellant listed on Appendix "A" (Regular Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

APPENDIX "A"

Name	Serial No.
Ruth A. McCarthy	0151758
Pete L. Navarro	0151885
Pauline M. Kinoshita	0151894
Philip Schepis	0152365
Carl Navarro, Jr.	0152366
Albert Navarro	0152367
Marie Navarro	0152368
Walter L. Rasic	0152517
Lubo P. Rasic	0152518
Nikola Rasic	0152519
Eva Rasic	0152520
Frank J. Kane	0152524
Weston L. Masson	0152525
Dorothy J. Kane	0152527
Patrick F. Kane	0152610
Robert Bosnyak	0155485
Mary Bosnyak	0155486
Evelyn Mittry	0153097
Richard F. Miller	0153515
Mary M. Miller	0153516
Albert N. Thorsen	0155483

Tony A. Stimolo	LA 0150720
Primo Fornaca	0153099
Wilfred E. Byham	0153328
John Bailey	0155487
Glenn Benham Thorson	0155488
Robert Pennes	0155902
Mabel Iris Murphy	0156425
Harry Thompson Hughs	0158547

56242-59

L (Sec)

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence of a water supply available for the irrigation of the land or where all of the water supplies within the drainage area are already being put to benefical use or are needed for other purposes.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record reveals that all of the water within the drainage is already being put to beneficial use.

Nick P. Leko, Los Angeles 0151065, etc. (June 18, 1959)
(Approved June 24, 1959 by Assistant Secretary of the Interior, Roger Ernst)

See Supp.
3-11-60

In reply refer to:

Los Angeles 0151065 etc. 1/
0148980 etc. 2/
0157718 3/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 18, 1959

DECISION

Nick P. Leko et al. 1/	:	Desert Land Application
Geneva S. Wenzel et al. 2/	:	
Barbara Anne Yazzette 3/	:	
	:	
	:	

Decisions of the Manager Affirmed

Nick P. Leko and the other applicants listed in Appendices "A", "B:, and "C" attached, have appealed from decisions of the Manager which rejected their desert land applications for the stated reason that they were not accompanied by proper showings contemplated by the regulation 43 CFR, 1954 ed., Part 232.

The departmental regulation 43 CFR, 1954 ed., Part 232 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement in addition to the map as may be required to demonstrate that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means. See June C. Keane, A-27847 (February 17, 1959) and cases cited.

1/ The lands involved in these applications are located in Ward Valley, California. For the names of the applicants and land office serial number in each case see Appendix "A".
2/ The lands are located in Fremont Valley, California. For the names of applicants and land office serial numbers see Appendix "B".
3/ The land is located in Indian Wells Valley. See Appendix "C".

However, irrespective of the issue of the sufficiency of the showings accompanying the applications, the lands could not be properly classified as suitable for desert land entry because there is no water available for irrigation Ruby R. Huffman et al., 64 I.D. 57 (1957); Walter E. Scott, A-27293 (June 21, 1956). The applications listed in Appendices "B" and "C" are apparently unsuitable for irrigation for the additional reason that the depth to ground water exceeds the depth from which it is practically feasible to pump for the irrigation of crops. Cf. Elizabeth Bullard et al., A-27242 (December 28, 1955).

The circumstances of the suitability of the lands for irrigated crop production for each of the areas involved in Appendices "A", "B", and "C" are enumerated below.

Appendix "A" (Ward Valley)

Field investigation and study of the drainage area indicates that there is insufficient ground water available for the irrigation of agricultural crops on a sustained basis. This conclusion is based on studies of the geological features of the whole drainage area and records of wells in the area. This conclusion is in agreement with studies of both the California State Division of Water Resources and the United States Geological Survey as well as other reports in the record.

Certain of the applications are accompanied by a history and log of the Santa Fe Railroad well which they state produces from 75 to 120 gallons of water per minute. Some of the applications also contain a report or statement of a well drilling and equipment company which states with respect to the well that:

> "We were not able to determine well performance from a well test, but using the pumping test reported by the Roscoe Moss Company we estimate this well capable of delivering 1200 GPM. Based upon this figure and the sprinkler system designated in accordance with enclosed sketch and proposal this well will provide irrigation water for 80 acres when equipped with the proper pump and drive."

The output of 75 to 120 gallons of water per minute coincides with information in our records concerning the output of the Santa Fe well however, 75 to 120 gallons of water per minute are sufficient for the irrigation of no more than 10 to 15 acres of land and inadequate for commercial crop production. Nor do we believe that an estimate of a pump test is a sufficiently reliable basis for concluding that the well could be made to produce sufficient water for irrigation.

Certain of the appellants also allege that there are two additional wells in the area which produce sufficient amounts of water for irrigation. However, the question is not simply one of whether or not water is available for the irrigation of a particular tract of land under desert land application. The question is whether or not there is any water available in excess of what is already being used and needed for livestock, domestic, and other purposes. Cf. Joe B. Forehand et al., A-26693, etc. (December 9, 1954). Under the circumstances, a desert land entry could not be properly allowed unless it could be shown that water is available in the drainage area surplus to the needs of the existing water users Cf. Dottie J. Beck et al., A-27884 (March 5, 1959) or that the water is not required or needed for other purposes more beneficial to the public than irrigation. Cf. Adeeb G. Thomas, A-27818 (February 12, 1959). In the circumstances, the applications must be rejected. Walter E. Scott, supra.

Appendix "B" (Fremont Valley)

The lands are located a few miles to the east and southeast from Koehn Dry Lake. Recent field investigations and studies concerning the occurrence of ground water in the drainage indicate that there are a number of irrigation wells in this part of the valley. However, these are located at the lower elevations on or near the valley floor. The subject lands lie on the benches and foothills above the valley 200 to 600 feet higher in elevation and to the east of any existing irrigation wells. Water levels of wells in the drainage indicate that the elevation of the surface of the land extending to the east from the valley floor at this point rises more rapidly than does the surface level of the water table underlying the land and that the depth to water becomes progressively greater from west to east. Depths to water at such locations exceed the depth from which it is considered economically feasible to pump water for the production of irrigated crops in the area. Elizabeth Bullard et al., supra.

Moreover, none of the irrigation wells within three miles of the proposed entries produce more than 315 gallons of water per minute which amount is sufficient for the irrigation of no more than 35 or 40 acres. This condition apparently occurs because the wells are located along the eastern edge of the basin and on or near the edge of the acquifer from which the water is pumped. The deeper water bearing alluvium is in the vicinity of Keohn Dry Lake three to fifteen miles west of the lands here involved. Therefore, the probability of securing water from wells for the irrigation of lands is very remote.

Since the Bureau's classification indicates there is no water for the irrigation of the lands and the applications and the appeal briefs contain no appropriate showings of any water available for irrigation, the application could not be properly allowed. June C. Keane, supra. Nor is there any showing in the record that water is available for the irrigation of any additional lands in Freemont Valley. Therefore, absent some persuasive showing that water is available for the irrigation of the lands, the applications must be rejected. Cf. Dottie J. Beck et al., supra.

Appendix "C" (Indian Wells Valley)

It is clear from the record that there have been numerous (350 or more) wells drilled in the valley. A few of these, about eight, are used for irrigation purposes. However, the record shows that the irrigation wells are located at elevations of 2,400 feet or less and on or near the valley floor. 4/ The land involved in the present appeal, Los Angeles 0157718 is located at an elevation of about 2,700 feet. The record reveals that there have been a number of attempts to secure high producing wells sufficient for irrigation on similar sites within the valley at various times over the past 40 years. However, these wells were not successful and have been abandoned. 5/

The appellant has submitted no information either with her application or her appeal to reasonably demonstrate that water is available for the irrigation of the land or that the development of water for irrigation is feasible by any practical means. See June C. Keane, supra. It is evident from the record that there is a high rate of water use within the drainage area for domestic, livestock, industrial, and military and other public purposes. However, there is no evidence that surplus water is available for the irrigation of additional lands Dottie J. Beck et al. supra., or that the water is not required or needed for other more beneficial purposes. Adeeb G. Thomas, supra. Accordingly, a desert land application could not be properly allowed.

4/ In fact, none of the high producing wells including wells employed for city water and industrial purposes are located at elevations exceeding 2,440 feet.

5/ The record shows that there have been a number of attempts to reclaim old wells and to drill new wells in the past five or six years.

Conclusion

Certain of the appellants allege that they have not been permitted to go upon the land to explore for water. However, the record indicates there is little prospect of obtaining a well or wells which would produce sufficient water for the irrigation of the lands involved and that any water available is already being put to beneficial use. Therefore, a special land-use permit to explore for water and drill a well could not be properly allowed. This view is consistent with classification procedures in prior cases involving the same issues. See Dottie J. Beck et al. supra.

The fact that entrymen would have a right to the use of underlying ground waters is not persuasive evidence of error in the classification. The Department has held in numerous cases that unless an actual water supply is available for the irrigation of the lands that they cannot be properly classified as suitable for desert land entry. Ruby E. Huffman, supra.

The decisions of the Manager are affirmed.

Charles P. Mead

Acting Director

Approved: June 24, 1959

Assistant Secretary of the Interior

DISTRIBUTION:

Mr. John M. Ennis, J. S. Stanley (Attorneys at Law) (Regular Mail)
Each Applicant in Appendices "A", "B", and "C"
Hon. Harry R. Sheppard, House of Representatives
Hon. Clair Engle, United States Senate
Hon. Thomas H. Kuchel, United States Senate
Lands Staff Officer (1)
Appeals List No. 1
CFG

APPENDIX "A"

Name of Applicant	Serial No. Los Angeles
Nick P. Leko	0151065
Royal Wayne Sinderson	0153525
Salvatore Barnese	0154218
Carmela Barnese	0154219
Mijo Kutlesa	0151749
Michael Cardillo	0154221
Anna Cardillo	0154222
Orrian W. Goodson	0154866
Lawrence I. Holt	0155973
Charles H. Phillips	0155974
Anthony Cicero	0151888
George W. Robinson	0156165
Mike Cicero	0151889
Mary M. Tropp	0156167
Philip Zanville	0156170
Mary Mazzi	0156171
Allen Silverman	0156187
Bernardine F. Helwig	0156196
LaVerne B. Elliott	0156197
Mary A. Bemis	0156199
Harland L. Edson	0156200
Miriam P. Edson	0156201

Name of Applicant	Serial No. Los Angeles
Virginia R. Abdun-Nur	0156205
Albert P. Abdun-Nur	0156206
Carl K. Doumani	0156207
Nicholas E. Kamin	0156208
Delbert R. Spears	0156211
Harry C. Mendsen	0156216
George L. Schuler	0156219
Casper R. Buol	0156222
Georgiana G. Robinson	0156223
William M. Quier	0156225
Raymond L. Dill	0156226
Frances E. Buol	0156235
Sarah O'Harra	0156236
William M. O'Harra	0156237
Robert L. Saal	0152898
Olin H. Bemis	0156238
Leo H. Saal	0152899
Harold Lewin	0156240
Emerson E. Hughes	0152918
Jacqueline A. Kamin	0156246
Mary T. McDevitt	0156249
Sam A. Abdun-Nur	0156251

Name of Applicant	Serial No. Los Angeles
Alexander S. Rachak	0156252
Paul Groesse	0156253
Theodore M. Horwith	0156254
Louis Romoff	0158685
Ruth Romoff	0158686
Sam Holzman	0158746
Carmine A. DiMassa	0158747
Paul Massari	0158748
John H. DiMassa	0158749
Percy W. Miles	0158828
Ruth Miles	0158829
J. L. Gregg	0158830
Alice L. Gregg	0158831
William W. Markham	0159123
Ruth E. Bigsby	0159125
Grace G. Janelunas	0159155
Clarence H. Denesen	0159156
Lester C. Ruffridge	0159157
Reuben G. Wright	0159395
Irene F. Olson	0159396
James P. Michaelson	0159726

Name of Applicant	Serial No. Los Angeles
Josephine H. Michaelson	0159727
William G. Hutson	0161426
Walter Marshall	0161689
David L. McGowan	0156255
John W. Bice	0156256
Alvin M. Sidman	0156258
J. C. Janelunas	0156259
Glenn Lutz	0156260
Catherine M. Reichert	0156262
Gertrude F. Doolittle	0156264
Peter N. Simon, Jr.	0156267
Margaret L. Schuler	0156268
Homer D. Gatchett	0156440
Everett I. Bailey	0156442
Samuel D. Hinkle	0156448
Glenna S. Hayes	0156451
Joseph H. Hayes	0156452
Kathryn O. Bowen	0156541
Maurice E. Bowen	0156542
William H. Cleveland	0156545

Name of Applicant	Serial No. Los Angeles
Keith K. Compton	0156546
Elizabeth K. Clark	0156547
Arthur C. Clark	0156548
Joseph G. Comfort	0156556
Arthur M. Anderson	0156563
Marcus C. Drury	0156660
Ernest A. Freeman, Jr.	0156661
Isabelle Freeman	0156662
Hubert D. Drury	0156664
William L. Baker	0156670
Velma R. Dale	0156855
Vito T. Mandala	0156864
Harvey A. Gross	0156867
Llewellyn F. Gross	0156868
Ann M. Plascjak	0156869
Molly Udell	0156871
Morris B. Udell	0156873
Alita M. Erie	0156874
Genevieve M. Wheelon	0156875
Edward M. Erie	0156878
Warren R. Eisenberg	0156879
Eleanor M. Mandala	0156881

Name of Applicant	Serial No. Los Angeles
Winslow F. Fogg	0156882
Larry G. Tate	0156883
Louis Carl Alissio	0156884
Sarah Alissio	0156885
Chester W. Froude	0156888
Richard Brown DuBois	0156890
Irwin Wemberger	0156893
Robert Bond Glassco	0156894
Harry Spies	0156895
Ida O. Gage	0156899
Lorne Arthur Wheelon	0156900
Alex Bernstein	0156927
Frederick Anton Schmidt	0156928
Everett Lee Wright	0156929
Charles B. Schenck	0156931
Ramona V. Chacon	0156933
David Farkas	0157098
Elmer A. Hankins	0157099
Irwin Berger	0157104
Alex Farkas	0157105
Margaret Rosenbaum	0157106

Name of Applicant	Serial No. Los Angeles
Chester D. J. MacArthur	0157107
John Francis Boyle	0157108
Woodrow Wayne Wilson	0157110
Orville Glen Wilson	0157111
Dean Ashton Wilson	0157112
Cyril Brookes	0157318
Adelle Marguerite Brookes	0157319
Erwin R. Vogel	0157320
Georgia I. Vogel	0157321
Robert F. Samuelson	0157322
Margaret Patricia Lewis	0157323
William Edward Lewis	0157324
Joseph Raymond Sasway	0157325
Philip Alkis	0157528
Rose Austin	0157529
Harold Norman Mishkin	0157530
Sophia Austin	0157531
Sarah Bloom	0157532
William Miller	0157535
Jean Mary Pascucci	0157536
Anthony L. Pascucci	0157537
Albert Martin Bernstein	0157538

Name of Applicant	Serial No. Los Angeles
Tomie David Welch	0157539
Julius Gould	0157541
Charles Mishkin	0157542
Myron J. Weiner	0157543
David Mishkin	0157544
Maxwell H. Gorman	0157545
Alice G. Weiner	0157546
Helen Vivian Rogers	0157750
Jesse LeRoy Rogers	0157751
Dolores Mae Sasway	0157752
Bobby Gene Edwards	0157753
Earl Estel Hooks	0157754
Eugene Elliott Nagle	0157786
Richard E. Thomas	0157885
Allica Betty N. Thomas	0157886
Mirto Edward Bigsby	0157889
Kay Lou Mashburn	0157890
Viola P. Dreyfus	0157891
David R. Addison	0157892
Aldred J. Dreyfus	0157893
Bernice Anita Malone	0157894
Joseph J. Malone	0157895
Calvin Joseph Danens	0158055

Name of Applicant	Serial No. Los Angeles
J. Kent Kelley	0158056
Bradford Lee Hickman	0158079
Sam Pecorilla	0158231
Mary Pecorilla	0158232
Paul F. Calhoun	0158394
Paul L. Reynolds	0158395
Delbert Upchurch	0158396
Cora Belle White	0158397
Gorton Fred White	0158398
Mildred Roberts Smith	0158399
Lemuel Johnny Smith	0158400
Frank R. Teofilo	0158424
Marie Belle Teofilo	0158425
Sam Perricone	0158426
Mary L. Perricone	0158427
Edward Perez	0158428
Sally W. Golub	0158432
Paul Golub	0158433
Stephen A. VanHofwegen	0158515
Adrian A. VanHofwegen	0158516
Jimmie L. Franklin	0158517

Name of Applicant	Serial No. Los Angeles
Archie Jackson Franklin	0158518
Ellavenia Gertrude Trice	0158519
Naomi Gertrude Dorsey	0158520
William G. Cartter, Jr.	0158523
Marilyn E. Franklin	0158525
Florence Lilly	0158526
Ramon L. Steelsmith	0158527
R. E. Driskel	0158528
Jean M. Driskel	0158529
John D. Sutton	0158660
Theuna Dale Jaynes	0158661
Philip S. Sirianni	0158680
Janice L. Sirianni	0158681

Appendix "B"

Name	Serial No. L.A.
Geneva S. Wenzel	0148980
Marcus Muskat	0151397
Edward M. Granz	0151474
Charlotte Granz	0151475
Iris Barbara Goodman	0151476
Fausto A. Acke	0154396
Anna E. I. Acke	0154397
Stanley Joseph Nadolski	0156836
Allen N. Roberts	0157975
Herbert Harry Wenzel	0160863

Appendix "C"

Barbara Anne Yazzetti	0157718

L (Sac)

RULES OF PRACTICE * 11 Statement of Grounds DL

Appeals from decisions of the Land Office Manager will be dismissed when the appellants fail to file statements of reasons for appeal within the time required by the rules of practice.

The late filing of statements of reason for appeal cannot be waived where the record shows the statements of reason were not transmitted until after expiration of the period of time within which the statements were required to be filed, even though the statements were received within the 10-day period of grace stipulated in 43 CFR 221.92(b).

Joseph Alvin Smith et al., Los Angeles 0140317, etc. (June 25, 1959)
(Approved July 2, 1959 by Assistant Secretary of the Interior, Roger Ernst)

hD

In reply refer to:

Los Angeles 0140317, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1959

DECISION

Joseph Alvin Smith et al. : Desert Land Applications

Appeals Dismissed

Joseph Alvin Smith and others listed in the attached Appendixes "A" and "B" have appealed from decisions of the Manager, which rejected their applications for desert land entry.

Notices of appeal were timely filed by the persons listed in Appendix "A" but did not include a statement of reasons for appeal. The Department's rules of practice require that a statement of the reasons for the appeal, if not included with the notice of appeal, must be transmitted to the office of the Director within 30 days after the notice of appeal is filed. In these cases no statements of reasons for appeal have been filed, and the time for filing the statements has expired (43 CFR, 1958 Supp., 221.3). In accordance with the rules of practice (43 CFR, 1958 Supp., 221.98(a)), appeals are summarily dismissed if the appellants fail to file a statement of reasons for appeal. Gerhard Evenson, 63 I.D. 331 (1956).

Notices of appeal were timely filed by the persons listed in Appendix "B" and a statement of the reasons for appeal was filed in each case, but the statements of reasons were not filed within the time required by the regulations; that is, they were not filed within 30-days after the filing of the notice of appeal and while some of them were received within the 10 days additional period allowed by 43 CFR 221.92(b), they were not transmitted within the 30 day period. For these reasons, the appeals connot be considered as properly filed. T. H. McElvain et al., A-27912 (May 29, 1959).

Therefore, all the appeals listed in Appendixes "A" and "B" are dismissed.

Director

Attachments 2

Approved: July 2, 1959

Assistant Secretary of the Interior

DISTRIBUTION:

Mr. Kenneth R. Henry, Attorney at Law (Regular Mail)
Mr. Wm. Blair Dalbey, Attorney at Law (Regular Mail)
Mr. George R. Phillips, Attorney at Law (Regular Mail)
Mr. Bertrand B. Bratton, Attorney at Law (Regular Mail)
Mr. Virgil V. Becker, Attorney at Law (Regular Mail)
Mr. Irving H. Brott, Attorney at Law (Regular Mail)
Each Appellant listed in Appendixes A and B (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

APPENDIX A (Cont'd)

Name	Serial No.
Peter Schack	LA 0155901
James E. Barrington	LA 0155910
Marvin J. Holt	LA 0157597
Murtice Marie Holt	LA 0157598
Thaddeus Joseph Nowak	LA 0157623
Evelyn L. Holt	LA 0157624
Marrie Schack	LA 0157814
Nora Jean Roberts	LA 0157976
Paul A. Scheffe	LA 0158233
Melvin B. Smith	LA 0158619
Robert L. Cleveland	LA 0158665
Eugene Harold Cleveland	LA 0158666
Daisy Harris Cleveland	LA 0158667
Norman P. Nilsen	LA 0159034
Esther Emily Gross	LA 0159373
Elsie Segrid Smith	LA 0159376
Darrell LeVerne Smith	LA 0159377
Richard Charles Smith	LA 0159400
Nona Bell Scheffe	LA 0159408
Clifford Gordon Veith	LA 0159409
Edith May Veith	LA 0159410
LaMont J. Bryant	LA 0159411
Bertie Lee Bates	LA 0159475
William Herbert Reedy	LA 0159671
Leona C. Praest	LA 0160845
Lillian Mary Ice	LA 0160947
Hassie Barnard Hall	LA 0160948

APPENDIX A

Name	Serial No.
Joseph Alvin Smith	LA 0140317
Charles F. Amrhein	LA 0143838
Ina L. Amrhein	LA 0143839
Clifford L. Nielsen	LA 0143921
Dorothy L. Nielsen	LA 0143922
Jacquelyn C. Koozin	LA 0151823
Victor T. Koozin	LA 0151824
June Brott	LA 0152858
Samuel F. Green	LA 0152931
Ellen L. Green	LA 0152932
Ben S. Chazen	LA 0153059
Pearl P. Handler	LA 0153060
Estelle P. Kahn	LA 0153074
Adele Yacoubian	LA 0153271
Louis (NMI) Wasserman	LA 0153278
Stilianos K. Nikolopulos	LA 0153600
Katherine N. Foley	LA 0153601
Alexandria A. Palmieri	LA 0153602
Esther A. Rasmussen	LA 0154267
Anna Louise Wells	LA 0154810
Walter Ralph Buchanan	LA 0155821

APPENDIX A (Cont'd)

Name	Serial No.
Andrew J. McSchealll, Jr.	LA 0161652
Beverly Anderson Gordon	LA 0161769
Donald MacNamara	LA 0161871

APPENDIX B

Name	Serial No.
Theodore J. Wittorff	LA 0151592
Willard Stone	LA 0154698
Charles F. Bryant	LA 0154749

appeal to Sec affirmed A-28243 9-8-60 (Sec)

DESERT LAND APPLICATION * 4 Proof (Extensions)

An application for a second extension of time to file final proof will be denied where the record indicates that the entryman has had unrestricted possession of the land for a two-year extension period in addition to the ordinary entry period of four years during which time he failed to exercise due diligence in the development of a water supply and an irrigation system. A delay in complying with the requirements for final proof will not be considered unavoidable where the entryman failed to take the necessary precaution to commence his well drilling and land development operations in time to complete these during the entry period.

The inability of an entryman to complete an irrigation well and develop the land during the entry period because of inadequate financial means is not proper grounds for an extension of time.

Reports of field investigations by land examiners of this Bureau are for administrative uses only and are not open to inspection by the public.

Marian M. Nicoll, John W. Nicoll, Los Angeles 088885, 088886 (July 15, 1959)

RD

In reply refer to:

Los Angeles 088885
088886
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Marian M. Nicoll John W. Nicoll	:	Desert Land Entries (Extensions of Time)

Decision of the Manager Affirmed; Entry Canceled

Marian F. Nicoll and John W. Nicoll have appealed from a decision of the Manager of October 7, 1958, which rejected their applications for extensions of time in which to make final proof of their desert land entries Los Angeles 088885 and 088886.

The record shows that prior extensions had been allowed on the grounds that litigations in mining claim cases involving the same lands had not been settled and because the entrymen had been unable to secure the services of a well driller when they finally decided near the end of the entry period to proceed to drill a well.

The extension granted was for a two-year period to April 25, 1956. The entrymen have now requested further extensions of time on the grounds that they had arranged for a well driller in March and that he had run into hard formations and was unable to complete the well in time to make final proof within the time allowed by the first extension. The applications for a second extension were rejected on the grounds that the entrymen had not pursued the reclamation of the land with diligence of taken steps necessary to anticipate or avoid the causes of the delay in the reclamation of the lands at least six months before the end of the first extension period.

The appeal alleges in substance that (1) applications for the second extension were filed with the Manager on April 25, 1956 which eliminates any implication that the entrymen preconceived any drilling difficulty before the well was begun on April 14, 1956.

(2) they were unable to obtain sufficient finances to complete the development because of insufficient water supplies and because they were unable to secure a second extension, (3) in 1957 when they were ready to irrigate the crop the well had caved in, (4) they have expended over $4,500 on the two entries which attests to their diligence in attempting to reclaim the land, and (5) they know of a number of irrigation wells in the locality and that they can obtain water for the irrigation of the lands involved if an extension of time is granted.

Further additional extensions are authorized by law under the Acts of April 30, 1912 (43 U.S.C. 334) and February 25, 1925 (43 U.S.C. 336) where it is shown that because of some unavoidable delay in the construction of irrigation works that the claimant is unable to make proof within the [illegible] entry period. However, Departmental regulations specifically provide that extensions will not be granted unless it is clearly shown that the failure to reclaim and cultivate the land within the regular entry period was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. 43 CFR, 1954 ed., 232.37(a).

It is clear from the assertions and statements of appellants themselves and affidavits of others concerning their annual proofs and other activities that they enjoyed unrestricted possession of the land for a six-year period commencing in April of 1950 when the entries were allowed.

Though the entrymen stated in their first applications for extensions that they were prepared to proceed with the development of an irrigation water supply and other improvements to the land to complete final proof, it is evident from their own testimony that no attempt was made to drill a well until April of 1956. In fact the record indicates the well drilling was not commenced until April 14, 1956, the last day of the extension period, and was not completed until May 14, 1956. Moreover, it appears evident from their own testimony that the entryman made no attempt to irrigate all or any part of the land in 1956 to ascertain whether or not the water supply from the well would be adequate for the irrigation of 380 or more acres of the land.1/

1/ The annual proof testimony submitted states that 380 acres of the two entries were "cleared" or "broke" for cultivation.

A proper determination concerning the adequacy of the water supply for the irrigation of the 380 or more acres of irrigable lands involved in the entries could hardly be made by merely "bailing the well," as the entryman assert they have done. 2/ In fact it appears that no attempt was made to irrigate any of the lands until the spring of 1957 and a year after the two year extension of time had expired. It was at this time that the entrymen discovered that the well had caved in.

Though the appellants indicate by their appeal that there are other irrigation wells in the vicinity they have submitted no information concerning the size and output of these wells to demonstrate that there is any reasonable likelihood that 380 acres or more could be irrigated from a single well in the area as the entrymen apparently proposed to do. As to the appellants' allegations of financial hardship, the Department has held that a desert land entryman's inability, for financial reasons, to obtain a water supply is not proper grounds for extension of time to make final proof. Cf. Elizabeth McGlothern, 46 I.D. 40 (1917).'

Appellants also allege that the Manager erred as he did not permit them to examine the field examiner's report involving the lands. However, they were permitted to examine the Manager's decision, official correspondence, and other documents in the record. These documents contain all of the pertinent data contained in the reports of field examination as well as other data obtained for the record which served as a basis for the Bureau's action in these cases, and the reasons for its actions were fully set forth in the Manager's decisions. Moreover, reports of field examiners are for administrative use only and are not for public inspection. Cf. United States v. William M. Barnett et al., Contests 36 and 38 (Colorado), August 22, 1958. This is not an arbitrary act but is based on principles of good administration and sound public policy supported by decisions of the court. See 38 L.D. 464, 465 (1908).

After careful consideration of the records in these cases, including the representations of the appellants, it is concluded that the decision of the Manager was correct, and it is hereby affirmed. The statutory period including the term of the two year extension granted terminated on April 14, 1956. Since that date is now passed and compliance with the law has not been shown, the entries are hereby canceled.

Marian M. Nicoll and John W. Nicoll are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Picolo

Enclosure
Distribution on page 4

2/ The desert land act contemplates that an entryman thereunder shall show a permanent and feasible source of water supply and that sufficient water is or will be available to irrigate and reclaim the whole of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated. Mullen v. Keaster, 44 L.D. 161 (1915).

DISTRIBUTION

Mr. John W. Nicoll (Certified Mail)
Mrs. Marian M. Nicoll (Certified Mail)
Appeals List No. 1
Lands Staff Officer
CFG

57714-59

appeal to Sec.
Appeal dismissed,
A-28247
11-13-59

L (Office)

DESERT LAND * 2 Application

A desert land application for lands located within an area granted to the Metropolitan Water District of Southern California pursuant to the act of June 18, 1932 (47 Stat. 324) is properly rejected.

A desert land application must be accompanied by plausible presumptive evidence that an actual water supply is available for the irrigation of the land, and a plan of irrigation completed in sufficient detail to reasonably demonstrate that the land is susceptible of irrigation by some practical means, together with a showing that the land itself is of a character suitable for the production of irrigated crops.

Harly E. Harty, Los Angeles 0103624 (July 15, 1959)

RD

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0103624
5.04g

Certified Mail
Return Receipt Requested

DECISION

July 15, 1959

Harly E. Harty : Desert Land Application

Decision of the Manager Affirmed, as Modified;
Desert Land Application LA 0103624
Rejected in its Entirety

Harly E. Harty has appealed from a decision of the Manager which rejected his desert land application, in part, because the lands are located within an area granted to the Metropolitan Water District of Southern California pursuant to the act of June 18, 1932 (47 Stat. 324).1/ The act, supra, is a grant in fee subject to certain reservations specified in the act, and conditional upon the filing of descriptive maps delineating boundaries of areas and locations affected, and the approval of such map or maps by the Secretary of the Interior. Section 5 of the act provides that, only upon cessation of the use for the purposes of the grant the estate of the grantee or its assigns shall terminate and revest in the United States. 2/

The record shows that application Los Angeles 053581 covering the lands involved herein was filed by the Metropolitan Water District and that the application was approved by the Department of the Interior on May 28, 1940. These acts transferred title of the lands to the District in accordance with the provisions of the act, supra. Therefore, a desert land application involving these lands could not be properly allowed.

Moreover, a review of the record reveals that the desert land application is not accompanied by any plausible presumptive showing that water is available for the irrigation of the lands, plan of irrigation, or showing as to the character of the land itself as required by the regulation 43 CFR 232.14.

1/ There is nothing in the record to show that the appeal was accompanied by a $5 filing fee. Unless it could be shown that the filing fee was properly submitted at the time the appeal was filed the appeal would be subject to summary dismissal. 43 CFR 221.2, 1957 Supp.

2/ When this decision becomes final the information submitted by the appellant with respect to non-use of the lands by the Metropolitan Water District of Southern California will be considered by the appropriate officer of this Bureau. However, should it be necessary to modify the grant in any way in the future by reason of non-use for the purposes authorized, or for other reasons, and should the lands thereafter become available to disposition under the public land laws, the applicant herein would have no priority right to the lands as they would be subject to preference right filings by veterans pursuant to section 4 of the act of September 27, 1944, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 282) or other terms of the public land order so opening them.

A desert land applicant for land to be irrigated from wells must furnish plausible presumptive evidence that an actual ground water supply is available for the irrigation of the land. A proper showing as to water supply must include any information from the State Engineer's Office or other available technical information or advice concerning the occurrence of ground water in the vicinity; the location, depth, static water level, draw-down water level, and volume of flow of wells heretofore sunk and affording a water supply to adjoining or nearby land along with information as to the types and acreages of crops produced as a result of irrigation from each well; or a statement that no such information is available. An adequate water supply is construed to mean the amount required to meet the seasonal requirements for the production of irrigated crops typical to the area on all of the irrigable portions of the land involved. Cf. Robert Charles Powell, A-25828 (April 7, 1950).

As to the plan of irrigation, it must be completed in sufficient detail to reasonably demonstrate that the proposed development is feasible by some practical means. Cf. Roy N. Brown, A-25935 (November 16, 1950). It must show the location of the proposed well or wells, the size of well, the anticipated depth in feet and draw-down water level, and volume of output; the size and type of the proposed pump, the source of power for it; and the size, capacity, and field distribution of canals, ditches, flumes, diversion boxes, sprinkler irrigation systems, or other installations required to distribute the water to all of the irrigable parts of each legal subdivision to be irrigated along with a summary estimate of the investment costs of all installations and equipment. Since the test of the adequacy of the irrigation system depends upon the water requirements of crops to be grown, the plan must indicate the type of crops that will ordinarily be produced and the normal seasonal water requirement for the production of such crops.

As to the showing required concerning the character of the land, this may be accomplished by reference to published soil and topographical maps or sketches or statements of the applicant, or both describing the texture, depth, and character of the soils and of the subsoil, if known, bearing on the suitability of the land for irrigated crop production. The approximate irrigable area of each legal subdivision and the topographical features of land must also be shown.

Mr. Harty's application is not completed as outlined above and it was subject to rejection for those reasons. Accordingly, the decision of the Manager is affirmed, as modified, and the desert land application is hereby rejected in its entirety.

The Bureau is not warranted in expending funds for field investigations in agricultural filings in the absence of a proper application which complies with statutory and regulatory requirements. 43 U.S.C. 327.

Harly E. Harty is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B Bissell

Enclosure

DISTRIBUTION:

Mr. Harly E. Harty (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

57714-59

appeal to Sec
affirmed A-28240
4-18-60 L O Sac

DESERT LAND * 1 Generally (Contests)

RULES OF PRACTICE * 7 Private Contests

Where prior to the cancellation of a desert land entry a contest complaint is summarily dismissed for failure to comply with the requirements of the Rules of Practice, the complaint was not instrumental in procuring a cancellation of the entry so the contestant has not thereby earned a preference right to enter the land.

Whether an application to contest should be allowed when it is filed after a Bureau decision has issued requiring the entryman to show cause why his entry should not be canceled, is a matter within the discretion of the Bureau.

Leila May Thomas v. Thomas Henry Hayes, Contest No. 6795

(July 20, 1959)

RV

In reply refer to:
Contest No. 6795
Los Angeles No. 093168
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 20, 1959

Certified Mail
Return Receipt Requested

DECISION

Leila May Thomas, Contestant	:	
	:	Desert Land
Thomas Henry Hayes, Contestee	:	

Decision of Chief, Lands Adjudication Unit, Affirmed as Modified

Leila May Thomas has appealed from the decision of the Chief, Lands Adjudication Unit, dated January 29, 1959, dismissing her contest complaint against the desert land entry of Thomas Henry Hayes, Los Angeles 093168, for the reason that the charges made by the contestant are based upon matters of record in the Land Office.

An examination of the contest complaint, filed on August 8, 1956, by the appellant shows that it does not comply with the Departmental regulations in effect at that time, 43 CFR, 221.54 (21 F.R. 1860, 1862 (March 27, 1956)) in the following respects:

1. The complaint does not contain a statement of the law under which the contestant claimed or intended to acquire title to, or an interest in, the land and of the facts showing her qualifications to do so.

2. The complaint does not state that the proceeding is not collusive or speculative, and that it was instituted and would be diligently pursued in good faith.

3. The complaint does not contain a request by the contestant that she be allowed to prove her allegations and that the adverse interest be invalidated.

4. The complaint does not contain the name of the office in which it was filed or notify the contestee that unless he files an answer to the complaint in such office within 30 days after service of the notice, the allegations of the complaint would be taken as confessed.

At the time the complaint was filed, subparagraph 221.54(i) of the regulations provided as follows: " * * * If the complaint does not meet each of these requirements, it will be summarily dismissed."

Accordingly, the appellant's contest complaint is summarily dismissed, and, for that reason, the decision appealed from is affirmed as modified. Moreover, since the dismissed contest complaint was not instrumental in procuring a cancellation of the Hayes' entry, the appellant has earned no preference right to enter the land. 43 U.S.C., 1952 ed., 185.

The Chief, Lands Adjudication Unit, has issued a decision dated January 29, 1959 calling upon Mr. Hayes to show cause why his desert land entry should not be canceled because of his failure to submit proof within the statutory life of his entry. Whether an application to contest filed after such a decision has issued on an entry would be allowed is a matter within the discretion of the Bureau to be determined by circumstances existing at the time of such a filing. Margaret M. Redmond, A-25907 (August 21, 1950).

Mrs. Leila May Thomas is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mrs. Thomas, then the adverse party to be served is:

Mr. Thomas Henry Hayes
733 Ridgeside Drive
Monrovia, California

For the Director:

John B Tecolo

Enclosure

DISTRIBUTION:

Mrs. Leila May Thomas (Certified Mail)
Mr. Thomas Henry Hayes (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

57714-59

DESERT LAND * 2 Application

Appeals will be summarily dismissed where the appellants either file no statement of reasons for their appeal or file the statement late.

Barbara Sacks et al., Los Angeles 0140359, etc. (September 17, 1959) (Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0140359, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1959

DECISION

Barbara Sacks et al.	:	Desert Land

Decision of the Manager Affirmed

Barbara Sacks and 47 others, listed in Appendices "A" and "B", have appealed from decisions of the Manager of the Los Angeles, California, Land Office rejecting their desert land applications because the applicants did not meet the minimum requirements of the regulations for evidence demonstrating the feasibility of reclaiming the lands for profitable irrigated agriculture.

Those applicants listed in Appendix "A" have failed to file statements of reasons in support of their notices of appeal. One of these, Barbara Sacks, Los Angeles 0140359, has requested a 90-day extension of time to submit a statement of reasons; however, the request was not filed within the allotted time. See 43 CFR, 1958 Supp., 221.97(c).

The applicants listed in Appendix "B", although submitting statements of reasons in support of their notices of appeal, did not file them within the 30-day period allowed by the regulations. 43 CFR, 1958 Supp., 221.3. The late filings can not be waived under the provisions of 43 CFR, 1958 Supp., 221.92 for the reason that the records show that none of the statements of reasons was transmitted to the Director's office before the end of the period within which they were required to be filed. Cf. Duncan Miller, 65 I.D. 380 (1958); Norman B. Wolford, A-28129 (July 28, 1959).

The provisions of 43 CFR, 1958 Supp., 221.98 require the summary dismissal of an appeal where no supporting statement of reasons is filed

as required by the regulations. 43 CFR, 1958 Supp., 221.3. The same is true if the statement of reasons is filed late. Accordingly, the decisions of the Manager are affirmed.

Acting Director

Approved: September 25, 1959

Assistant Secretary of the Interior

DISTRIBUTION:
Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Hon. Thomas H. Kuchel, United States Senate
Each Appellant listed in Appendices "A" and "B" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

A P P E N D I X "A"

Name	Los Angeles Land Office Serial No.
Barbara Sacks	0140359
Helen L. Carter	0145662
H. Martin Carter	0145663
Robert A. Rosser	0145706
Dominic Ross	0146364
Harriett A. Ross	0146365
William Borani	0151179
George P. Hack	0151463
Mike P. Kutlesa	0151747
Jerry Leko	0151754
Frances Leko	0151760
Glen Dee Story	0152190
Alfred Auster	0153017
George A. Enloe	0155402
Bradley W. Onion	0155403
Else Margrethe Andersen	0155879
Erik Bruun Andersen	0155881
Burneta Minugh	0155996
Morris Vincent Hodges	0156602
Leah Mae Buchanan	0157148

Name	Los Angeles Land Office Serial No.
Elsie Gustafson	0158370
Virginia E. Jones	0158719
Louise H. Craddock	0158814
Sheldon F. Craddock	0158815
Lucy B. Surdy	0160361
Elaine S. Becker	0160378
Michele Lo Grande	0161477
Frances C. Russo	0161478
Phyllis T. Russo	0162085
Gerhard Reitz	0162570
James E. Heaney	0162581
Raymond L. Cantor	0162583
Holland Newton Stevenson, Jr.	0162037
Florence M. Bannon	0155401
Robert W. Safarik	0155364

A P P E N D I X "B"

Name	Los Angeles Land Office Serial No.
Adah M. Walters	0147284
John K. Brandenburg	0148321
James D. Millhauser	0150660
Helen V. Townsend	0151807
Romilda M. Sauer	0153243
Bryce E. Sauer	0153244
Sophie Kravitz	0154758
Gordon Lennox Snider	0155447
Willabel Lennox MacGregor	0155450
Benjamin Philip Kates	0157914
Lorelle T. Young	0160188
Franz J. Borchard	0161909
Frieda W. Borchard	0161910

62479-59

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence of a water supply available for the irrigation of the land and all of the water supplies within the drainage area are already being put to beneficial use or are needed for other purposes.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record reveals that all of the water within the drainage is already being put to beneficial use.

Oscar O. H. Nelson et al., Los Angeles 0160613, etc. (September 17, 1959)

(Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0160613, etc. 1/
0154613, etc. 2/
0153726, etc. 3/
0156098, etc. 4/
0157779, etc. 5/
0141937, etc. 6/
0156974, etc. 7/
0155993, etc. 8/
0153018, etc. 9/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1959

DECISION

Oscar O. H. Nelson et al. 1/	:	
Ralph B. Nunnelley et al. 2/	:	
Edna Schmerler et al. 3/	:	
Richard Palmer Sheldon et al. 4/	:	
George F. Meiser et al. 5/	:	Desert Land Applications
William T. Young et al. 6/	:	
H. Dale Raridon et al. 7/	:	
Eula I. Conard et al. 8/	:	
Sam Danilovich et al. 9/	:	
	:	
	:	

Decisions of the Acting Manager and Chief,
Lands Adjudication Unit, Affirmed

Oscar O. H. Nelson and the others listed in Appendices "A" through "I" attached have appealed from decisions of the Acting Manager and Chief,

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1/ The lands involved are located in Mesquite Valley, California. For names of applicants and land office serial number in each case see Appendix "A".
2/ The lands involved are located in Johnson Valley, California. For names of applicants and land office serial numbers see Appendix "B".
3/ The lands involved are located in Lucerne Valley, California. For names of applicants and land office serial numbers see Appendix "C".
4/ The lands involved are located in Antelope Valley, California. For names of applicants and land office serial numbers see Appendix "D".
5/ The lands involved are located in Salt Wells Valley, California. For names and serial numbers see Appendix "E".
6/ The lands are located in Chuckawalla Valley, California. For names and serial numbers see Appendix "F".
7/ The lands are located in Indian Wells Valley, California. For names and serial numbers see Appendix "G".
8/ The lands are located in Pahrump Valley, California. For names and serial numbers see Appendix "H".
9/ The lands are located in the Mojave River Drainage, California. For names and serial numbers see Appendix "I".

Land Adjudication Unit, which rejected their desert land applications for the stated reasons that the applications were not accompanied by proper showings as contemplated by the regulations 43 CFR, 1954 ed., Part 232.

The departmental regulation 43 CFR, 1954 ed., 232.10 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means. Roy N. Brown, A-25935 (November 16, 1950). See also June C. Keane, A-27847 (February 17, 1959) and cases cited.

However, irrespective of the issue of the sufficiency of the showings accompanying the applications, the lands could not be properly classified as suitable for desert land entry because there is no water available for irrigation, Ruby R. Huffman et al., 64 I.D. 57 (1957); Walter E. Scott, A-27293 (June 21, 1956). The applications listed in Appendix "A" are apparently unsuitable for irrigation for the additional reason that the soils on the lands are unfit for irrigated crop production.

The circumstances of the suitability of the lands for irrigated crop production for each of the areas involved in Appendices "A" through "I" are enumerated below.

Appendix "A" (Mesquite Valley)

The record indicates that the long time annual rate of recharge to the ground water table in Mesquite Valley is insufficient to meet the demand for lands now under irrigation. Moreover, the record indicates that there are over 4,000 acres of deeded lands or lands embraced by subsisting desert land entries in Mesquite Valley. The record indicates further that there are approximately 540 acres of lands in the Valley that have class I soils and 6,100 acres of lands that have class II soils. These class I and class II soils are described in the field report as loams and fine sandy loams; whereas the lands in issue are classified as class III lands due to the heavy clay, poorly drained soils that are unsuitable for irrigated crop production. Accordingly, the desert land applications could not be properly allowed. See Dottie J. Beck et al., A-27884 (March 5, 1959).

Appendix "B" (Johnson Valley)

The agricultural potential of the lands in Johnson Valley has been the subject of intensive investigations by field personnel of this Bureau. The record shows there are a number of dry holes at various

locations throughout the Valley which have been abandoned, some of which were drilled to depths of from 250 to 550 feet. Hydrological engineers of the Geological Survey have advised field personnel of this Bureau that there is insufficient ground water in Johnson Valley for agricultural purposes due to the small watershed and the low annual precipitation within the drainage area and that extensive pumping would lead to the total depletion of the ground water in the Valley.

There are over 4,100 acres of privately-owned lands in Johnson Valley of which about 2,000 acres may be irrigable provided water is available and development of the land for agricultural purposes is feasible. However, it appears evident from the record including allegations in the appeals that no more than 60 or 70 acres of the lands in Johnson Valley are now or ever have been irrigated. The record indicates further that none of the lands involved in the present appeals are located within the area of approximately 11,500 acres considered to embrace the more favorable soil sites within Johnson Valley. Moreover, the Department has held in a nearly identical case involving other lands in Johnson Valley that the lands were properly classified as unsuitable for desert land entry. See Daniel T. Pecnik et al., A-27582 (July 9, 1958).

Appendix "C" (Lucerne Valley)

The circumstances of water supplies available for the irrigation of additional lands in Lucerne Valley has been the subject of a number of detailed field investigations and studies by personnel of this Bureau. As a result of these investigations it has been concluded that there is no water available for any further agricultural developments within the Valley. This conclusion is based on a study of the production of wells in the Valley and ground water movements and levels throughout the Valley. The record indicates that there are only two irrigation wells in the vicinity of the lands here involved and that the production of these is no more than about 50 miners inches. Other wells reported are used only for livestock water and domestic purposes. The annual rate of replenishment to the ground water table in the Valley is very small due to the very limited precipitation of the area. Moreover, records of wells indicate there has been a consistent decline in the water level of all of the wells in Lucerne Valley over the past 20 years. Thus, it appears that all available water supplies within the drainage area are already being put to beneficial use and that the allowance of any additional desert land entries would merely aggravate an already serious water situation. Accordingly, no further desert land applications could be properly allowed. Cf. Joe B. Forehand et al., A-26693, etc. (December 9, 1954). The circumstances of water supplies available for irrigation developments in Lucerne Valley has been recognized by the Department in a number of prior cases wherein the Bureau has been sustained in the rejection of any further desert land filings. See June C. Keane, supra. Also see Emma M. Roybal, A-26356 (April 21, 1952).

Appendix "D" (Antelope Valley)

A detailed field investigation of water use in Antelope Valley reveals that there are over 50,000 acres irrigated each season and that annual water requirements for the irrigation of the lands already under irrigation exceeds the annual rate of recharge to the ground water basin. As a result there has been a progressive decline in ground water levels due to the heavy extractions necessary to maintain acreages presently irrigated. The Department has held in prior cases that desert land applications for public lands in Antelope Valley are properly rejected. Creighton O. Waldorf et al., A-25790, etc. (February 28, 1950). Under such circumstances no further agricultural entries could be properly allowed. See Nick P. Leko et al., Los Angeles 0151065, etc. (June 18, 1959) approved by the Department June 24, 1959.

Moreover, the record indicates that the acreage of public land in Antelope Valley susceptible of irrigation comprises less than 1 percent of the 180,000 acres of undeveloped land considered to be irrigable if water is available. Therefore, the applications here involved were properly rejected. See Frances Elizabeth Cain et al., Los Angeles 0145092, etc. (June 18, 1959) approved by the Department June 24, 1959.

Appendix "E" (Salt Wells Valley)

The record reveals there are five wells on the west slope of Salt Wells Valley. Four of these wells were drilled in 1953. However, all of the five wells have been abandoned. There are no irrigation wells in the vicinity.

The lands involved lie along the ridge between Indian Wells Valley and Salt Wells Valley or on the higher slopes of Salt Wells Valley. The only significant accumulation of water in these valleys occurs within the deeper alluvium deposits on or near the floor of the valleys. Accordingly, there is no reasonable likelihood that water in amounts required for irrigation underlies any of the lands involved. Assertions of appellants that there are water wells situated at the lower elevations within Indian Wells Valley are not persuasive showing that water is available to the lands involved. Moreover, there is no indication that any of the wells referred to by the appellants are used for irrigation purposes or that they produce sufficient amounts of water for that purpose. In the circumstances the lands could not be properly classified as suitable for desert land entry. Cf. June C. Keane, supra (February 17, 1959). Also see Nick P. Leko et al., supra.

Appendix "F" (Chuckawalla Valley)

Geological information indicates that Chuckawalla Valley is not an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the Valley and drains into the Colorado

River. The appellants have referred to a number of wells in the Valley and have submitted water production data concerning nine of these which they allege together produce about 38 second feet of water. However, the record reveals there are over 20,000 acres of State and privately-owned lands within Chuckawalla Valley of which approximately 9,000 acres are irrigable if adequate water is available. Moreover, there are 40 or more allowed but undeveloped and unpatented desert land entries in the Valley involving 12,000 or more acres. The irrigable State and privately-owned lands together with the pending desert land entries, which if developed for irrigated crop production would require a total of about 375 second feet of water. The Department has consistently held that there is insufficient water available for any additional desert land entries in Chuckawalla Valley. See Walter E. Scott, supra. Also see Frances Elizabeth Cain et al., supra.

Appendix "G" (Indian Wells Valley)

The record indicates that there are eight irrigation wells in Indian Wells Valley. However, these are located at elevations of 2,400 feet or less and on or near the Valley floor. The lands here involved lie on the benchlands above the Valley floor. The record reveals further that there have been many attempts to secure high producing wells sufficient for irrigation on similar sites within the Valley at various times over the past 40 years including a number of attempts to reclaim old wells and to drill new ones in the past five or six years. Such efforts have met with no success.

The appellants have submitted no information with their applications or their appeals to reasonably demonstrate that water is available in amounts required for irrigation or that the development of a reliable water supply is feasible by any practical means. See June C. Keane, supra. Moreover, it is evident from the record that there is a high rate of water use within the drainage area for domestic, livestock, industrial, and public purposes. Therefore, unless it can be shown that surplus water is available for the irrigation of additional lands, Dottie J. Beck et al., supra, or that the water is not required or needed for other more beneficial purposes, no further desert land applications for lands in Indian Wells Valley could be properly allowed. Cf. Adeeb G. Thomas, A-27818 (February 17, 1959). Also see Nick P. Leko, supra.

Appendix "H" (Pahrump Valley)

This Bureau has completed a detailed field investigation and analysis of the circumstances of soils, water supply and rates of water use, and other factors affecting agricultural developments within the Valley.

The record indicates that there are more than 51,000 acres of privately-owned lands within the drainage area which are irrigable if water supplies are available in addition to seven or more subsisting desert land entries embracing about 2,000 acres. Water requirements for the irrigation of the privately-owned lands together with the pending desert land entries, if developed for irrigated crop production, would exceed 260,000 acre feet per annum; whereas, the best information available indicates that the annual rate of recharge to the whole drainage area does not exceed about 23,000 acre feet. The record indicates further that all of the available water within the Valley is already being put to beneficial use on the more productive soil sites within the drainage and that the present rate of water use on lands now irrigated exceeds the long-time annual inflow to the whole drainage area. Accordingly, no further desert land applications could be properly allowed. Cf. Horace H. and Norma J. Neely, A-27890 (April 27, 1959). Also see Dottie J. Beck et al., supra.

The record also reveals that the soils in Pahrump Valley range from fine sandy loams designated as class I soils to excessively heavy clays designated as class 5 soils. The lands involved in the present appeals range from clay loams and silty fine sands designated as class 3 soils to excessively heavy clay loams of the class 5 type. The class 4 and 5 lands are clearly unfit for irrigated crop production and no entries could be properly allowed on the class 3 lands unless it could be shown that water is available for the irrigation of all undeveloped class 1 and class 2 lands within the drainage area. Cf. Dottie J. Beck et al., supra.

Allegations of the appellants that there are irrigation wells on the Hafens and Sons Ranch, the Bowman Ranch, the Sims Ranch, and at other locations within the Valley are not persuasive evidence that water is available for the irrigation of any additional lands in the drainage area. Nor is the unsupported statement that test wells in the vicinity have been pumped for three years with no noticeable decrease in volume persuasive evidence that water is available in excess of existing needs or that the land itself is fit for irrigated crop production.

Appendix "I" (Mojave River Drainage)

The record indicates that all of the water in the Mojave River drainage area is now being used for livestock, irrigation, industrial, and municipal and other public purposes. The record indicates further that the present use of the underground water in the Drainage already exceeds the long-time annual inflow to the whole drainage area and that any further agricultural developments there will result in an overdraft of the replenishable water supply available for use in the area. See Andrew T. Johnson et al., A-27305, etc. (September 25, 1957). Also see Horace H. and Norma J. Neely, supra. The Department has consistently held that desert land applications are properly rejected where an adequate water supply is not shown, Melvin W. Westwood et al.,

A-26751, etc. (August 20, 1954), or where the allowance of entries would aggravate an already serious water situation. Joe B. Forehand et al., supra. Moreover, the record reveals that the economic returns per acre foot of water used in the Mojave River drainage area for community and industrial purposes far exceed returns realized from irrigation. See Adeeb G. Thomas, supra.

Accordingly, no further desert land applications could be properly allowed unless it could be shown that water is available in excess of the needs of the existing water users.

Conclusion

Certain of the appellants allege that they have not been permitted to go upon the land to explore for water. However, the record indicates there is little prospect of obtaining a well or wells which would produce sufficient water for the irrigation of the lands involved and that any water available is already being put to beneficial use. Therefore, a special land-use permit to explore for water and drill a well could not be properly allowed. This view is consistent with classification procedures in prior cases involving the same issues. See Dottie J. Beck et al., supra; also see Horace H. and Norma J. Neely, supra, and cases cited.

The fact that entrymen would have a right to the use of underlying ground waters is not persuasive evidence of error in the classification. The Department has held in numerous cases that unless an actual water supply is available for the irrigation of the lands that they cannot be properly classified as suitable for desert land entry. Ruby E. Huffman, supra.

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying ground water, does not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 10/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877 11/ as added, required a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 12/ under the general regulatory authority of the Secretary of the Interior. 13/ These

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10/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).
11/ 19 Stat. 377, 43 U.S.C. 327
12/ 43 CFR, 1954 ed., Part 232
13/ R. S. § 2478, 43 U.S.C. 1201

administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing rights of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 14/

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard R. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desire. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

After careful consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands in the following sections and townships are properly classified as unsuitable for development for agricultural purposes:

T. 3 N., R. 4 E.,	S.B.M.,	California,	sections 1 through 36
T. 3 N., R. 4 W.,	same		same
T. 4 N., R. 3 E.,	"		"
T. 5 N., R. 1 E.,	"		
T. 5 N., R. 2 E.,	"		"
T. 5 N., R. 3 E.,	"		"
T. 5 N., R. 4 E.,	"		"
T. 6 N., R. 1 E.,	"		"
T. 7 N., R. 7 W.,	"		"
T. 8 N., R. 7 W.,	"		"
T. 9 N., R. 1 E.,	"		"
T. 10 N., R. 3 E.,	"		"
T. 11 N., R. 1 W.,	"		"
T. 19 N., R. 12 E.,	"		"
T. 22 N., R. 9 E.,	"		"
T. 22 N., R. 10 E.,	"		"
T. 23 N., R. 8 E.,	"		"
T. 23 N., R. 9 E.,	"		"
T. 24 N., R. 8 E.,	"		"
T. 3 S., R. 15 E.,	"		"
T. 3 S., R. 17 E.,	"		"
T. 4 S., R. 16 E.,	"		"
T. 5 S., R. 16 E.,	"		"
T. 5 S., R. 17 E.,	"		"
T. 5 S., R. 22 E.,	"		"

14/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

T. 6 S., R. 17 E., S.B.M., California,		sections 1 through 36
T. 6 S., R. 18 E.,	"	"
T. 6 S., R. 21 E.,	"	"
T. 7 S., R. 20 E.,	"	"
T. 27 S., R. 39 E., M.D.M., California		"
T. 27 S., R. 40 E., same		sections 13 through 36
T. 27 S., R. 41 E.,	"	sections 1 through 5, 7 through 36
T. 28 S., R. 40 E.,	"	sections 1 through 36

Accordingly, the decisions rejecting the desert land applications in the present appeals are affirmed; all pending agricultural applications (including without limitation desert land and homestead applications) for any of the above-described lands are hereby rejected (see 43 CFR 221.31); and, until further notice, any such applications hereafter received for any of the public lands involved will not be accepted for filing but will be returned to the applicant accompanied by a notice stating that the lands have been classified as unsuitable for agricultural entry and that no right of appeal lies from the refusal to accept the applications for filing.

Acting Director

Approved: September 25, 1959

Assistant Secretary of the Interior

DISTRIBUTION:

Mr. John M. Ennis, Attorney at Law (Regular Mail)
Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Mr. Irving P. Austin, Attorney at Law (Regular Mail)
Mr. Paul B. Witmer, Jr., Attorney at Law (Regular Mail)
Mr. Burke Mathes, Attorney at Law (Regular Mail)
Each applicant in Appendices "A" through "I" attached
Hon. Thomas H. Kuchel, United States Senate
Hon. Joe Holt, Member of Congress
Lands Staff Officer (1)
Appeals List No. 1
CFG

A P P E N D I X "A"

Name of Applicant	Serial Number
	Los Angeles
Oscar O. H. Nelson	0160613
Mabel C. Nelson	0160727

A P P E N D I X "B"

Ralph B. Nunnelley	0154613
Muriel E. Nunnelley	0154680
Timoteo Jaime	0158158
George V. Popovich	0158549
John R. Wheeler	0159897
Joyce A. Wheeler	0159898
Francis Xavier Morrell	0159899
Susan Lucy Morrell	0159900
George W. Moore	0159990
Frances L. Moore	0159991
Della L. Holbrook	0159992
Louis Daniel Gallagher	0160771
Joan F. Jones	0160772

A P P E N D I X "C"

Edna Schmerler	0153726
William R. MacKinnon	0154077
Ronald C. Frogget	0154168
Robert Lyle Good	0154837
Bernard Thomas Calvert	0154838
Owen Gray	0157299

A P P E N D I X "D"

Name of Applicant	Serial Number
	Los Angeles
Richard Palmer Sheldon	0156098
Charles E. Bender	0158503
Nancy A. Roberts	0158504
Gertrude H. Austin	0160227

A P P E N D I X "E"

George F. Meiser	0157779
George C. Montgomery	0158072
Connie N. Mead'Ors	0158146
Susan O. Falligant	0158169
Derry B. Osborne	0158170
Albert J. Chaix	0158256
Robert M. Yamasaki	0158838
Joseph Samuel Debney	0158867
Joseph John Novotny	0160567

A P P E N D I X "F"

William T. Young	0141937
Alice Lucca	0146868
Edna J. Guhl	0151134
Royce L. Guhl	0151135
Richard Haynes Lacock	0152394
Donald A. Oleson	0152832
Carl Winters Jensen	0154042

(cont'd on page 3)

A P P E N D I X "F" (Cont'd)

Name of Applicant	Serial Number
	Los Angeles
Carl LaVant Gardner	0154220
Loretta R. Boschult	0160080
Patsy Rae Joachim	0160156
George E. Casteris	0160309
Thomas J. Lundin	0160310
Louise Skoller	0160377
Ella B. Nelson	0160464
Bella Fogel	0160531
Elia Dora Bonino	0160698
Floyd Bonino	0160699
Wilma A. Miner	0161421
Sam Bamboles	0161999
Miriam Brooks Sherman	0162062

A P P E N D I X "G"

H. Dale Raridon	0156974
Larry Lee Raridon	0157082
Jack A. Raridon	0157083
Nettie Wasserman	0157377
Lottie F. Diner	0157433
Mary L. Tosh	0158074
June R. Legg	0159490
Wesley R. Legg	0159491
Constance B. Jeske	0161415

A P P E N D I X "H"

Name of Applicant	Serial No.
	Los Angeles
Eula I. Conard	0155993
Acel O. Conard	0155994
Edward G. Minugh	0155997
Marlene T. Reynolds	0156019
Lee T. Reynolds	0156020
Norma N. Espy	0156109
John Montagano	0157917
Edward J. Berg	0158247
Kathryn M. Berg	0158248
Edgar Wm. Lundberg	0158775
Richard J. Brooks	0158796
John Earl Neal	0158798
Eunice Parker Luttrell	0158801
Frederick H. B. Ehrenreich	0158805
Earl Gordon Lee	0158806
Agnes T. Ehrenreich	0158807
Marilyn L. Crawford	0158808
Edward R. Le Carpentier	0158836
Lester G. Hunter	0158878
Robert Hulsey	0160064
Marshall B. Crume	0160069
Burton N. Goldblatt	0160071

(cont'd on page 5)

A P P E N D I X "H" (Cont'd)

Name of Applicant	Serial Number
	Los Angeles
Andrew Archer	0160073
Ned A. Warner	0160076
Irene A. Warner	0160077
Charley F. Ogden	0160503
Roger William Flann	0160578
Elroy Walfred Flann	0160579
Edwin G. Anderson	0160580
Robert A. Hengen	0161443

A P P E N D I X "I"

Sam Danilovich	0153018
Julius Krantz	0153020
Louis Rosen	0153126
Vivian E. Ellsworth	0153127
William Henry Fahnrich	0159930
Stanislaw Michala Murzyn	0159931
Isabel Jeannette Merrifield	0159932
Paul Christian Byrne	0159933

62479-59

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence of a water supply available of a quality or quantity required for the irrigation of the land and the depth to water exceeds the depth from which it is feasible to pump irrigate from wells in the area.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record reveals that the ground water is poor in quality and insufficient in quantity for irrigated crop production.

A desert land application for lands having sandy, gravelly soils; rough topography; or other characteristics which make the lands unfit for irrigated crop production is properly rejected.

William H. Hazelwood et al., Los Angeles 0152336, etc. (September 25, 1959) (Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0152336, etc. 1/
0157980, etc. 2/
0154555, etc. 3/
0156567, etc. 4/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1959

DECISION

William H. Hazelwood et al. 1/ Cillin E. Trenchard et al. 2/ Betty J. Parish et al. 3/ Earl Burgess Hamlin et al. 4/	:	Desert Land Applications

Decisions of the Manager Affirmed

William H. Hazelwood and others listed in Appendices "A" through "C" have appealed from decisions of the Los Angeles Land Office which rejected their desert land applications for the stated reasons that the applications were not accompanied by proper showings as contemplated by the regulations 43 CFR, 1954 ed., Part 232. The applications listed in Appendix "A" were rejected for the additional reason that the soils and water are unfit for agricultural purposes.

The departmental regulation 43 CFR, 1954 ed., Part 232.10 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development

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1/ The lands are located in Cuddeback Valley, California. For names of applicants and land office serial numbers see Appendix "A".
2/ The lands are located in Bristol Valley, California. For names of applicants and land office serial numbers see Appendix "B".
3/ The lands are located on Palo Verde Mesa, California. For names of applicants and land office serial numbers see Appendix "C".
4/ The lands are located in the North Muroc Area, California. For names of applicants and land office serial numbers see Appendix "D".

by some practical means. Roy N. Brown, A-25935 (November 16, 1950); see also June C. Keane, A-27847 (February 17, 1959) and cases cited. However, irrespective of the issue of the sufficiency of the showings accompanying the applications the lands cannot be properly classified as suitable for desert land entry if there is not sufficient water available for irrigation. Ruby E. Huffman et al., 64 I.D. 57 (1957); Walter E. Scott, A-27293 (June 21, 1956).

The circumstances of the suitability of the lands for irrigated crop production for each of the areas involved in Appendix "A" through "D" are enumerated below.

Appendix "A" (Cuddeback Valley)

This Bureau has completed a detailed field investigation and analysis of the circumstances of soils, water supply and quality, and other factors affecting agricultural developments in the Valley. The record reveals there are about 30 wells in the Valley. Though there have been numerous attempts to cultivate the lands in Cuddeback Valley none of the wells are being used for irrigation purposes and there are no lands in the Valley that have been developed for irrigated crop production. The circumstances that prevent agricultural developments in the Valley apparently stem from the highly saline character of the ground water at the lower elevations on or near the Valley floor and the lack of any adequate water bearing materials underlying the better drained sites on the benchlands above the Valley floor. Consequently, there is no water available in amounts required for the irrigation of the benchlands above the Valley floor. Moreover, the record reveals that about fifty percent of the lands in the townships involved and adjoining townships within the Valley are already patented. These patented lands occupy locations on the Valley floor as well as along the benchlands above the Valley floor and are comparable in location and character to the lands here involved. Nevertheless, none of these patented lands have been developed for irrigated crop production purposes. See Martha K. Bongfeldt et al., Los Angeles 0150912, etc. Approved

The appellants have submitted no persuasive showing either with their applications or their appeals to reasonably demonstrate that the lands under application are susceptible of irrigation by any practical means. In view of the circumstances involved we believe that the lands are properly classified as unfit for irrigated crop production. See June C. Keane, supra.

Appendix "B" (Bristol Valley)

The record reveals that Bristol Valley drains internally to dry lakes. Though there are 8 wells in the Valley none of these are used for

irrigation purposes. The only well which produces any substantial amount of water in the Valley is the Santa Fe Railroad well. However, even that well if employed for irrigation purposes would produce sufficient water for the irrigation of no more than 35 or 40 acres whereas the applicants here involved have each applied for 320-acre tracts. Moreover, the records show that the lands here involved are intermingled with deeded lands already in private ownership. These privately-owned lands comprise forty percent or more of the total land area within Bristol Valley. Nevertheless, none of the patented lands have been developed for irrigated crop production. Accordingly, we believe that the lands are properly classified as unsuitable for desert land entry. See Martha K. Bongfeldt et al., supra.

Appendix "C" (Palo Verde Mesa)

A detailed soils report covering the lands on Palo Verde Mesa reveals that the soil cover on the tracts here involved vary from gravelly loamy fine sands to terrace escarpment none of which is considered suitable for irrigated crop production. Moreover, the topography of much of the land embraced by the application of Robert P. Reynolds, Los Angeles 0160574, is rough and broken in topography and topographically unfit for irrigated crop production.

The appellants have submitted no plausible showing that the lands are susceptible of irrigated crop production by any practical means. There has been no showing that the lands are in fact agricultural in character. Accordingly, the desert land applications could not be properly allowed. This determination is consistent with action taken by the Bureau involving other similar type lands in the vicinity. See Norma Tyler Richardson, Los Angeles 085858 (November 25, 1957).

Appendix "D" (North Muroc Area)

The lands are located in the northern part of the Mojave Desert some eight to twenty five miles north and northeast from Rogers Lake.

As to the application for lands in sec. 12, T. 11 N., R. 8 W., S.B.M., California, the record shows there are a total of nine wells in the adjoining sections 2, 3, 10 and 11. A number of these wells are large wells having 12 and 14 inch casings and all are deep wells. Nevertheless, the production from them ranges from only 30 GPM to 200 GPM with the exception of one well on section 5 which is reported to produce 600 GPM. This one well out of the total of nine wells which might produce sufficient water for the irrigation of 60 to 75 acres of land is located two or more miles to the west of the well sites indicated in the applications here involved and at an elevation of 50 to 100 feet below the lands here under application.

It is evident from the foregoing that the probability of obtaining an irrigation well for the irrigation of even 60 acres is very remote, nevertheless, the appellants have applied for tracts of 280 and 320 acres which they state they propose to irrigate by pumping from wells. It is clear that the probability of developing the lands to comply with the requirements of the Desert Land Act is very remote. See Mullen v. Keaster, 44 L.D. 161 (1915). 5/

As to the lands in section 32, T. 30 S., R. 40 E., M.D.M., California, these lands lie at an elevation of 3400 or more feet above sea level and several hundred feet above the Valley floor where any significant accumulation of ground water occurs. The appellants allege that the lands are underlain by a "vast underground lake", however, these allegations are based on newspaper accounts which upon investigation do not support the belief that water is available for the irrigation of the lands involved in the present appeals.

The conclusion that the lands here involved are unfit for agricultural purposes is buttressed by the experiences of prior entrymen involving similar type lands in the area. See Umberto Sarno, Los Angeles 0104863 (June 26, 1958). Umberto Sarno was one of a number of entrymen whose final proof was rejected for adjacent lands for the reason that they were unable to reclaim the land during the entry period.

Conclusion

Certain of the appellants allege that their applications should not have been rejected because the lands had at one time been classified as suitable for entry. However, the fact that certain of the lands may have been classified as suitable for desert land entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the considered judgment of the classifier based upon evidence available at the time the classification is made, it is subject to revocation or revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954). 6/

5/ In that case the Department stated in applicable part that the Desert Land Act contemplates that an entryman thereunder shall show a permanent and feasible source of water supply sufficient to irrigate all of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated.

6/ Requests for special land-use permits to drill and explore for water will not be issued where records indicate there is no water available for the irrigation of additional lands in the areas involved. See Peter W. Breene et al., Los Angeles 0148894, etc.

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying ground water, does not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 7/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877 8/ as added, requires a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 9/ under the general regulatory authority of the Secretary of the Interior. 10/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing rights of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 11/

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard E. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desired. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

After careful consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands in the following sections and townships are properly classified as unsuitable for further development for agricultural purposes:

T. 30 S., R. 40 E.,	M.D.M.,	California,	sections 1 through 36
T. 30 S., R. 41 E.,	"	"	"
T. 30 S., R. 42 E.,	"	"	"
T. 31 S., R. 41 E.,	"	"	"

7/ See Ruby E. Huffman et al., supra, pp. 69-70.
8/ 19 Stat. 377, 43 U.S.C. 327
9/ 43 CFR, 1954 ed., Part 232
10/ R.S. § 2478, 43 U.S.C. 1201
11/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

T. 31 S., R. 42 E.,	M.D.M.,	California,	sections 1 through 36	
T. 31 S., R. 43 E.,	"	"	"	
T. 32 S., R. 43 E.,	"	"	"	
T. 5 N., R. 13 E.,	S.B.M.,	"	"	
T. 5 N., R. 14 E.,	"	"	"	
T. 6 N., R. 14 E.,	"	"	"	
T. 11 N., R. 8 W.,	"	"	"	
T. 6 S., R. 22 E.,	"	"	$E\frac{1}{2}NW\frac{1}{4}$ section 21	
T. 7 S., R. 21 E.,	"	"	section 21; $SW\frac{1}{4}NW\frac{1}{4}$, $SW\frac{1}{4}$	sec. 22

Accordingly, the Manager's decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation desert land and homestead applications) for any above-described public lands are hereby rejected (see 43 CFR 221.31); and, until further notice, any such application which may be hereafter filed for any of the public lands involved will not be accepted for filing but will be returned to the applicant, accompanied by a notice stating that the lands have been classified as unsuitable for further agricultural entry and that no right of appeal lies from the refusal to accept the application for filing.

Edward Woozley
Director

Approved: September 25, 1959

Roger Ernst
Assistant Secretary of the Interior

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Mr. Clayton Straub, Attorney at Law (Regular Mail)
Each applicant on Appendices "A" through "D"
Lands Staff Officer
Appeals List No. 1
CFG

APPENDIX "A"

Name	Serial No.
	Los Angeles
William H. Hazelwood	0152336
Gilbert F. Wahl	0152337
Edward N. Spryer	0152534
Clarence G. Satchell	0152535
Samuel Wasserman	0156365
Maurice P. Albert	0156366
Noah O. A. Hayman	0156495
Permelia L. Hayman	0156496
James F. Sheriff	0156628
Milton Robbins	0156629
Harry Paul Albert	0156918
Betty Spindel	0156973
Natalie Coe	0157374
Ilgvars Dizgalvis	0157586
Joan Gertrude Moore	0157790
Kennie V. Moore	0157791
Joseph K. Harrison	0158075
Richard Harold Harrison	0158076
Jerald E. Decker	0158250
Hazel Alta Decker	0158251
Tillie Salter	0158622
Samuel Honigberg	0158658

Name	Serial No.
	Los Angeles
John K. Keefe	0158869
Antoinette P. Portizo	0158973
Peter Anthony Portizo	0158974
Adeline M. Portizo	0158975
Rita M. Giesing	0159006
Andrew W. Giesing	0159007
Jack C. Winters	0159016
Hazel L. Winters	0159017
Frank E. Brand	0159019
Edward J. O'Toole	0159023
James Astle, Jr.	0159136
Evelyn Astle	0159137
Joseph B. Henderson	0159228
John F. Shea	0159229
Gertrude V. Taylor	0159297
Dorothy L. Keefe	0159340
Charles K. Keefe	0159341
Beulah J. Hurlburt	0159517
Dorothy H. Hammond	0159696
Julian Bator	0159736
Gladys L. Cunningham	0159772
Keith N. Cunningham	0159773
Dan Mesa	0160701

Name	Serial No.
	Los Angeles
Ida Fialkoff	0160770
Ida Skayan	0160836
Evert L. Heliker	0160871
Harvey W. Aikins	0160920
Maximo S. Contreras	0161047
James D. Story	0161183
Dale H. Macklin	0161416
Carl E. Mitchell	0161418
Percy Sanders	0161419
Gerald G. Neidigh	0161595

A P P E N D I X "B"

Name	Serial No.
	Los Angeles
Cillin Elaine Trenchard	0157980
George Junior Trenchard	0157981
Sue Pulliam Eady	0158127
Harold F. Gordon	0159004
Robert T. Buchanan	0159039
Edith Wallack	0160550
Howard M. Wallack	0160551
Lorraine Anna Nowak	0162073
Jean A. Miller	0162234
Richard R. Demmerle	0162235
Harry W. Cobb	0162237
Mary J. McWherter	0162258
Alfred Sommer	0162320
Morris H. Saks	0162321
Vernon L. Crear	0162324
Richard Williams	0162524
Norman G. Render	0162525
William E. Elwing	0162627
Bertha K. Elwing	0162635
Elaine R. Dickson	0162636
Mary Sue McGary	0162937
Jack L. Purdue	0162938

Name	Serial No.
Elizabeth Wonsowich Charron	Los Angeles 0163028
Fernand R. Charron	0163029
Lennie M. New	0163129

A P P E N D I X "C"

Betty J. Parrish	0154555
Marylea Lucas	0154556
Robert P. Reynolds	0160574
Teresa C. Suttle	0160575

A P P E N D I X "D"

Earl Burgess Hamlin	0156567
Abraham Mehterian	0157645
George A. Balian	0159441
Mary J. Balian	0159442

62479-59

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence a water supply is available for the irrigation of additional lands or where all of the water supplies within the drainage area are already being put to beneficial use or are subject to rights which have vested under applicable State law.

PUBLIC LANDS * 8 Special land-use permit

An application for special land-use permit to drill a well and explore for water is properly rejected absent a proper showing that water is available for the irrigation of additional lands.

Peter W. Breene et al., LA-0148894 etc. (September 25, 1959) (Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:
Los Angeles 0148894 etc. 1/
0144646 etc. 2/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1959

DECISION

Peter W. Breene et al. 1/ Brooke Chapin et al. 2/	:	Desert Land Applications

Decisions of the Manager Affirmed

Peter W. Breene and the others listed on Appendices "A" and "B" attached have appealed from decisions of the Manager which rejected their desert land applications for the stated reasons that the applications were not accompanied by proper showings contemplated by the regulation 43 CFR, 1954 ed., part 232; and because there is insufficient water available for irrigation of the lands.

The Departmental regulation 43 CFR, 1954 ed., 232.10 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means. Roy N. Brown, A-25935 (November 16, 1950). See also June C. Keane, A-27847 (February 17, 1959) and cases cited.

However, irrespective of the issue of the sufficiency of these

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1/ The lands involved in these applications are located in Harper, Troy, and the Lower Mojave River drainage area. For the names of the applicants and land office serial number in each case, see Appendix "A". See also Martha K. Bongfeldt et al., Los Angeles 0150912 etc.

2/ The lands are located in Coyote Valley one of the interconnected basins which makes up the Mojave River drainage area. For names and land office serial numbers, see Appendix "B".

showings accompanying the applications, the lands here involved cannot be properly classified as suitable for desert land entry because there is no evidence that sufficient water is available for the irrigation of additional lands in the Mojave River drainage area. The record indicates that all of the water within the Mojave River drainage area is now being used for livestock, irrigation, industrial, and public purposes. The record indicates further that the present use of the underground water in the drainage area already exceeds the long-time annual inflow and that any further agricultural development in the Mojave River drainage area will result in an overdraft of the replenishable water supply available for use in that area. See Andrew T. Johnson et al., A-27305 (September 25, 1957). Also see Horace H. and Norma J. Neely, A-27890 (April 24, 1959). The Department has consistently held that desert land applications are properly rejected where an adequate water supply is not shown, Melvin W. Westwood et al., A-26751 etc. (August 20, 1954), or where the allowance of entries would aggravate an already serious water situation. Joe B. Forehand et al., A-26693 etc. (December 9, 1954). Moreover, the record reveals that the economic returns per acre foot of water used for community and industrial purposes far exceed returns realized from irrigation in the area involved. See Adeeb G. Thomas, A-27818 (February 17, 1959). Therefore, unless it can be shown that water supplies are available in excess of amounts already subject to existing rights and amounts required to meet the needs of the community, further agricultural entries will not be allowed.

Certain of the appellants in Appendix "A" allege that they have not been permitted to go upon the land to explore for water and drill a well. However, the question here involved is not simply one of whether or not an entryman might be able to sink a well and obtain water for the irrigation of the land. The existence of a large underground water supply within the drainage area is known. The question is whether there is sufficient water available in excess of what is already being used or needed under existing rights for livestock, domestic, and other purposes. Cf. Joe B. Forehand et al., supra. The appellants' assertions that the Mojave River is underlain by a "vast underground lake" is not persuasive evidence of an irrigation water supply as the reports referred to by the appellants are newspaper accounts which upon investigation do not reveal facts which would support a finding that water is available for the irrigation of any additional lands within the drainage area.

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying groundwater, does

not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 3/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877 4/ as added, required a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 5/ under the general regulatory authority of the Secretary of the Interior.6/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing rights of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 7/

Certain of the appellants in Appendix "A" also allege that their applications should not have been rejected because the lands had been classified as suitable for desert land entry in the past. However, the fact that certain of the lands may have been classified as suitable for that type of entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the considered judgement of the classifier based upon evidence available at the time of the classification, it is subject to revocation or revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954).

Certain of the appellants in Appendix "B" allege that Coyote Valley is a "physiographically distinct ground water basin" due to an impervious water barrier or "sill" which prevents the waters of the Mojave River drainage area proper from entering Coyote Valley. But, they have failed to refute the Bureau's position that the lands involved are situated within the "zone of influence" of the main drainage area of the Mojave River.

3/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).

4/ 19 Stat. 377, 43 U.S.C. 327

5/ 43 CFR, 1954 ed., Part 232

6/ R. S. § 2478, 43 U.S.C. 1201

7/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

However, even though it be assumed that the foregoing allegation of the appellants is correct, the lands involved could not properly be classified as suitable for desert land entry because there has been no showing under applicable Federal law that water is available in amounts required for the irrigation of any additional desert land entries in Coyote Valley. Our records indicate that there are some 7,000 or more acres of privately owned lands and subsisting entries within the area considered to be arable provided adequate water is available for the irrigation of the lands. Irrigation of these would require over 21,000 acre feet of water per annum and a rate of use of over 120 cubic second feet of water throughout the irrigation season. Accordingly, the fact that the combined output of existing wells in Coyote Valley may be capable of producing at a rate of about 30 cubic second feet or more, as the appellants allege and reports indicate, without any significant effect on ground water levels within the valley, is not persuasive evidence that a water supply is available in such amount or of such duration as would be required to meet with the final proof requirements of additional entries under the Desert Land Act. See Mullen v. Keaster, 44 L.D. 161 (1915).8/ In the circumstances additional desert land entries cannot be properly allowed unless it is shown that sufficient water is available in the drainage area in excess of existing rights. Cf. Dottie J. Beck et al., A-27884 (March 5, 1959),9/ and that the water is not required under existing law for other purposes. Cf. Adeeb G. Thomas, supra.

The contention that water which escapes Coyote Valley either evaporates or sinks into Soda Lake appears to have little merit. Records indicate that the seasonal runoff in the vicinity of Afton is highly variable from season to season and insufficient to permit any estimate of the amount of flow present in half of the years for which flow records have been maintained. Accordingly, there appears to be no significant flood waste from any part of the Mojave drainage area in most seasons.

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard R. Noren et al., A-27147 (August 1, 1955). The appellants have had an opportunity to put into the record any information they desire. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

8/ In that case the Department stated in applicable part that the Desert Land Act contemplates that an entryman thereunder shall show a permanent and feasible source of water supply sufficient to irrigate all of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated.

9/ Also See June C. Keane, A-27847 (February 17, 1959).

After consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands embraced in the following townships are properly classified as unsuitable for further agricultural development:

T. 9 N., R. 1 E., S.B.M., California
T. 9 N., R. 2 E.
T. 9 N., R. 4 E.
T. 10 N., R. 2 E.
T. 10 N., R. 3 E.
T. 11 N., R. 2 E.
T. 11 N., R. 3 E.
T. 11 N., R. 4 E.
T. 10 N., R. 4 W.
T. 11 N., R. 5 W.
T. 11 N., R. 3 W.
T. 12 N., R. 4 W.
T. 32 S., R. 42 E., M.D.M.

Accordingly, the Manager's decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation homestead and desert land applications) for any of the lands in the above-listed townships are hereby rejected (See 43 CFR 221.31); and, until further notice, any such applications which may be hereafter filed for any of the lands in these townships will not be accepted for filing but will be returned to the applicant accompanied by a notice that the lands have been classified as unsuitable for further agricultural development and that no right of appeal lies from the refusal to accept the application for filing.

Edward Woozley
Director

Approved: September 25, 1959

Roger Ernst
Assistant Secretary of the Interior

DISTRIBUTION:

Each Applicant listed in Appendices "A" and "B" (Regular Mail)
Mr. William Blair Dalbey, Attorney (Regular Mail)
Messers. Kronick & Moskovitz, Attorneys (Regular Mail)
Mr. George R. Wickham, Attorney (Regular Mail)
Hon. Harry R. Sheppard, House of Representatives
Hon. Edgar W. Hiestand, House of Representatives
Lands Staff Officer (1)
Appeals List No. 1
CFGilfeather

Appendix "A" (Harper Valley)

Name of Applicant	Serial No.
Peter W. Breene	LA-0148894
Prosper D. Smith	0152069
Pearl Ida Socola	0152384
Mary Alice Zisking	0152385
Shirley D. Cohen	0152386
Melville H. Nahin	0152455
Louis Lane	0152456
Henry M. Bernstein	0152484
William H. Wilmarth	0153170
Harry A. Melvin, M. D.	0153226
Corlista L. Smith	0158059
Grady L. Williams	0100090
Woodrow W. Kirkland	0145918
Helen Hanna	0153229
Joe Abreim	0157863
Jerry Philip Conboy	0160492
Anthony Lavendusky	0161648
Vera Irene Nigg	0162003
Nellie Marie Bastady	0162066
Aylward P. Schwarz	099786

Appendix "B" (Coyote Valley)

Name of Applicant	Serial No.
Brooke Chapin	0144646
Hubert W. Sharpe	0152635
Leon H. Sorell	0152636
Barbara L. King	0152674
Arthur S. Salume	0152682
Gerald W. Miller	0152687
Walter J. Schultz	0152878
Anthony S. Kasulis	0152997
Chiyohiro J. Yamamoto	0153137
Leo Sullivan	0153230
Walter L. McEachern	0156007
George C. Parker	0158562
Kathryn Lorena Westmoreland	0160976
Lillian H. Wright	0161676
Ronald F. Robberson	0161680
John J. Tuttle	0161700
Joan Scott Norton	0161708
Arby Wolf Alper	0161359

DESERT LAND * 3 Classification

A desert land application is properly rejected where there is no evidence a water supply is available for the irrigation of additional lands or where all of the water supplies within the drainage area are already being put to beneficial use or are subject to rights which have vested under applicable State law.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well is properly rejected where the record reveals that there is no water available in amounts required for irrigation and where all of the available water is already being put to beneficial use or is subject to rights which have vested under applicable State law.

RULES OF PRACTICE * 6 Hearings

A hearing is not held as a matter of right to determine the proper classification of land for desert land entry. A hearing is granted only where there is reasonable likelihood that it would develop facts decisive of the issues. A request for hearing will be denied where an appellant has made no showing that he would be able to present evidence controverting the facts of record.

Martha K. Bongfeldt et al., Los Angeles 0150912, etc. (September 25, 1959) (Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Los Angeles 0150912, etc. 1/
0153780, etc. 2/
0155404, etc. 3/
0151714, etc. 4/
0157949, etc. 5/
0123492, etc. 6/
0143269, etc. 7/
0150686, etc. 8/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

September 25, 1959

Martha K. Bongfeldt et al. 1/	:	
Cora P. Hileman et al. 2/	:	
Opal T. Sonne et al. 3/	:	
Elsie G. Benwell et al. 4/	:	Desert Land Application
Henry G. Bartholomew et al. 5/	:	
Ida V. Clark et al. 6/	:	
John W. Beery 7/	:	
Annie J. Sandrini et al. 8/	:	

Decisions of the Manager Affirmed

Martha K. Bongfeldt and the others listed in Appendices "A", "B", "C", "D", "E", "F", "G", and "H" attached have appealed from decisions of the Manager which rejected their desert land applications for the stated

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1/ The lands involved in these applications are located in the "Middle Mojave" of the Mojave River drainage basin or one of the interconnected basins which make up the Mojave River drainage area. For the names of the applicants and the corresponding land office serial number in each case see Appendix "A".
2/ The lands are located in Fremont Valley, California. For names and land office serial numbers see Appendix "B".
3/ The lands are located in Chemehuevi Valley, California. For names and land office serial numbers see Appendix "C".
4/ The lands are located in Chuckawalla Valley, California. For names and land office serial numbers see Appendix "D".
5/ The lands are located in Indian Wells Valley, California. For names and land office serial numbers see Appendix "E".
6/ The lands are located in Ward Valley, California. For names and land office serial numbers see Appendix "F".
7/ The lands are located in Upper Kingston Valley, California. For the name and land office serial number see Appendix "G".
8/ The lands involved in these applications are located in Rice Valley, California. For the names of applicants and land office serial numbers see Appendix "H".

reasons that the applications were not accompanied by proper showings contemplated by the regulations 43 CFR, 1954 ed., Part 232. 9/

The departmental regulation 43 CFR, 1954 ed., Part 232.10 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means. Roy N. Brown, A-25935 (November 16, 1950). See also June C. Keane, A-27847 (February 17, 1959) and cases cited. However, irrespective of the issue of the sufficiency of these showings accompanying the applications, the lands cannot be properly classified as suitable for desert land entry if there is not sufficient water available for irrigation. Ruby R. Huffman et al., 64 I.D. 57 (1957); Walter E. Scott, A-27293 (June 21, 1956).

The circumstances of the suitability of the lands for irrigated crop production for each of the areas involved in Appendices "A" through "H" are enumerated below.

Appendix "A" (Mojave River drainage area)

These applications involve lands located in the "Middle Mojave" or one of the interconnected basins which make up the Mojave River drainage area and lie outside the "zone of influence" of that area. The circumstances of water supply within this drainage area have been the subject of a number of detailed investigations and studies by this Bureau as well as other Bureaus of the Department. These investigations reveal that ground water in amounts required for irrigation is available only to those parts of the Valley that are influenced by underflow and seepage. The classification holds that no further desert land or homestead applications can be properly allowed for lands lying outside the "zone of influence" of the River, as are the lands here involved, because all of the available water is required for the irrigation of lands lying within the "zone of influence" of the River and for industrial and other purposes. This classification has been upheld by the Department in numerous cases. See Horace H. and Norma J. Neely, A-27890 (April 27, 1959) and cases cited.

9/ The applications in Appendices "A", "C", "D", and "E" were rejected for the additional reason that there is insufficient water available for the irrigation of the lands.

The appellants assert that there are a number of wells in the area of varying sizes and depths. However, they have not shown that water in amounts required for irrigation is available from any wells with the exception of certain wells located within the "zone of influence" of the Mojave River where there is a known water supply. Nor are the appellants' assertions that the Mojave River is underlain by a "vast underground lake persuasive evidence of an irrigation water supply as the reports referred to by the appellants are newspaper accounts which upon investigation do not reveal facts which would support a finding that water is available for the irrigation of the lands involved in the present appeals.

Certain of the appellants allege that Coyote Valley is a "physiographically distinct ground water basin" due to an impervious water barrier or "sill" which prevents the waters of the Mojave River drainage area proper from entering Coyote Valley, and that the boundaries of the "zone of influence" of the Mojave River have not been accurately delineated. We believe that the appellants have made no persuasive showing of any error in the Bureau's location of the boundaries of the "zone of influence" of the Mojave River. However, even though we were to assume that the foregoing allegations of the appellants are correct, our records reveal there already are some 7,000 or more acres of privately owned lands and subsisting entries in Coyote Valley considered to be arable provided available water can be found for the irrigation of the lands. Irrigation of these would require over 21,000 acre feet of water per annum and a rate of water use of over 120 cubic second feet throughout the irrigation season. Accordingly, the fact that the combined output of existing wells in Coyote Valley may be capable of producing at a rate of about 30 cubic second feet, as the appellants allege, without any significant effect on ground water levels within that valley is not persuasive evidence that a water supply is available in amounts required to meet the final proof requirements for additional entries under the Desert Land Act. See Mullen v. Keaster, 44 L.D. 161 (1915). 10/ In the circumstances a desert land entry could not be properly allowed unless it could be shown that water is available in the drainage in excess of the needs of the existing water users, Cf. Dottie J. Beck et al., A-27884 (March 5, 1959), or that the water is not required or needed for other purposes more beneficial to the public than for irrigation. Adeeb G. Thomas, A-27818 (February 17, 1959). The contention that ground water now escapes Coyote Valley and either evaporates or sinks into Soda Lake appears without merit. Records at Afton indicate that the seasonal runoff from the entire Mojave drainage area, including Coyote Valley, is

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10/ In that case the Department stated in applicable part that the Desert Land Act contemplates that an entryman thereunder shall show a permanent and feasible source of water supply sufficient to irrigate all of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated.

highly variable from season to season and insufficient in amount to permit any measurement of the surface runoff or subsurface drainage present in half of the seasons for which flow records have been maintained.

Appendix "B" (Fremont Valley)

The lands are located a few miles to the east and southeast from Koehn Dry Lake. Recent field investigations and studies concerning the occurrence of ground water in the drainage indicate there are a number of irrigation wells in Fremont Valley. However, these are located at the lower elevations on or near the valley floor. The subject lands lie on the benches and foothills above the valley floor 200 to 600 feet higher in elevation and two to ten miles to the east of any of the existing wells. Water levels of wells in the drainage area indicate that the elevation of the surface of the land extending to the east from the valley floor at this point rises more rapidly than does the surface level of the water table underlying the land and that the depth to water becomes progressively greater from west to east. Depths to water under the lands here involved exceed the depth from which it is considered economically feasible to pump water for the production of irrigated crops in the area. See Elizabeth Bullard et al., A-27242 (December 28, 1955). Moreover, there are no wells which produce sufficient water for the irrigation of agricultural crops within a distance of five or more miles of the lands involved. This condition apparently occurs because the deeper water bearing alluvium within the Valley lies at the lower elevations of the Valley floor, whereas the lands involved lie on the benchlands above the Valley floor and beyond the limits of the acquifer.

Appendix "C" (Chemehuevi Valley)

The record reveals there are a few wells in the Valley which are used for livestock and domestic purposes, however, the output of these is small. Though approximately 20,000 acres of deeded lands intermingled with the public lands in the Valley might be suitable for irrigation, if sufficient water were available, no portions of these lands have been developed for irrigation.

Field reports based upon geological studies of the entire drainage area reveal that there is no significant accumulation of ground water. Moreover, Chemehuevi Valley is not an enclosed drainage basin but drains freely into the Colorado River. Accordingly, the classification holds that there is no water available in amounts required for irrigation. This classification was upheld by the Department in Pearl Y. Hogle et al., A-27889 (April 23, 1959). The appellants in the present cases have submitted no persuasive evidence either with their applications or their appeals which would controvert the Bureau's position concerning the circumstances of water supply in the Valley. Therefore, the applications could not be properly allowed. See June C. Keane, supra.

Appendix "D" (Chuckawalla Valley)

Geological information indicates that Chuckawalla Valley is not an enclosed drainage basin but that the ground water percolates in a southeasterly direction through the Valley and drains into the Colorado River. The appellants have referred to a number of wells in the Valley and have submitted water production data for nine of these which they allege together produce about 38 second feet of water. However, the record reveals there are over 20,000 acres of State and privately owned lands within Chuckawalla Valley of which approximately 9,000 acres are irrigable if adequate water were available. Moreover, there are 40 or more allowed but undeveloped and unpatented desert land entries in the Valley involving 12,000 or more acres. The irrigable State and privately owned lands together with the pending desert land entries, if developed for irrigated crop production, would require a total of about 375 second feet of water during the irrigation season.

Though the appeals are accompanied by statements and reports of geologists which state that there is an extensive alluvial fill within Chuckawalla Valley of a proper porosity to retain considerable amounts of water, they have made no showing concerning the annual rate of recharge to the drainage basin. Unless it can be shown that the rate of recharge to the drainage basin exceeds 375 second feet of water no further desert land applications can be properly allowed. Cf. June C. Keane, supra.

Appendix "E" (Indian Wells Valley)

It is evident from the record that there have been numerous (350 or more) wells drilled in the Valley. 11/ The eight irrigation wells reported are located at elevations of 2,400 feet or less and on or near the Valley 12/ floor. The subject lands are located on the benchlands above the Valley floor. The record indicates that there have been a number of attempts to secure high producing wells sufficient for irrigation on similar sites within the Valley at various times over the past 40 years. However, these wells were not successful and have been abandoned. 13/

11/ Geological Survey reports indicate that 73 of these are still in use. Five are industrial wells, eight are used for irrigation, 29 are used for public purposes, and 31 are used for domestic or stock watering purposes.
12/ In fact, none of the high producing wells including wells employed for public supply and industrial purposes are located at elevations exceeding 2,440.
13/ The record shows that there have been a number of attempts to reclaim old wells and to drill new wells in such locations in the past five or six years.

Moreover, the record indicates that there are over 20,000 acres of deeded lands in Indian Wells Valley. Most of these deeded lands were acquired under the agricultural land laws and occupy the more select soil sites at the lower elevations on or near the Valley floor. Nevertheless, very little of the land has been developed for agricultural purposes. There appears to be no reasonable likelihood that the lands involved in the present appeals (which have a much lower potential for irrigated crop production than the undeveloped deeded lands within the drainage area) are susceptible of irrigation by any practical means.

The appellants have submitted no information either with their applications or their appeals to reasonably demonstrate that water is available for the irrigation of the land or that the development of the lands for irrigation is feasible by any practical means. See June C. Keane, supra. Moreover, it is evident from the record that there is a high rate of water use within the drainage area for domestic, livestock, industrial, and public purposes. There has been no showing that water is available for the irrigation of any additional lands, Dottie J. Beck et al., supra, or that the water is not required or needed for other purposes more beneficial to the public than for irrigation. Adeeb G. Thomas, supra. Accordingly, no further desert land applications could be properly allowed.

Appendix "F" (Ward Valley)

Field investigation and study of the drainage area indicate that there is insufficient ground water available for the irrigation of agricultural crops. This conclusion is based on studies of the geological features of the whole drainage area and records of wells in the area. The Bureau's findings coincide with those of the California State Division of Water Resources and the United States Geological Survey as well as other data of record.

Certain of the applications are accompanied by a history and log of the Santa Fe Railroad well which the appellants state produces from 75 to 120 gallons of water per minute. Some of the applications also contain a report or statement of a well drilling and equipment company which states with respect to the well that:

> "We were not able to determine well performance from a well test, but using the pumping test reported by the Roscoe Moss Company we estimate this well capable of delivering 1200 GPM. Based upon this figure and the sprinkler system designated in accordance with enclosed sketch and proposal this well will provide irrigation water for 80 acres when equipped with the proper pump and drive."

The output of 75 to 120 gallons of water per minute coincides with information in our records concerning the output of the Santa Fe well, however, 75 to 120 gallons per minute are sufficient for the irrigation of no more than 10 to 15 acres of land and inadequate for commercial crop production. Nor do we believe that an estimate of a pump test is a sufficiently reliable basis for concluding that the well could be made to produce sufficient water for irrigation purposes.

Appendix "G" (Upper Kingston Valley)

Investigation of the area indicates that there is insufficient water in the area for irrigated crop production. This conclusion is based on studies conducted by the Geological Survey and by this Bureau. There are no irrigation wells in the Upper Kingston Valley. The only deep well in the vicinity produces only about 24 gallons of water per minute which is insufficient for irrigated crop production.

Nor has the applicant made any persuasive showing either by his application or his appeal that water is available for irrigation. Therefore, the application must necessarily be rejected. See June C. Keane, supra.

Appendix "H" (Rice Valley)

Field investigation and study of the drainage area indicate that there is insufficient water available for the irrigation of agricultural crops on a sustained basis. This conclusion is based on studies of the geological features of the entire drainage area as well as records of stock water and domestic wells and a long history of unsuccessful attempts to develop irrigation wells in Rice Valley. The record indicates that there are five water wells in the area. However, three of these are domestic or livestock wells. The well located on sec. 13, T. 1 S., R. 18 E., is reported to have an output of 260 gallons per minute. This amount would be adequate for the irrigation of no more than 30 acres. No production is reported for the other wells. Moreover, the well reported to produce 260 gallons of water per minute is located one or more townships to the west of the lands under application and is not persuasive evidence that water is available to the lands in issue. Cf. Dottie J. Beck et al., supra.

Conclusion

Certain of the appellants allege that their applications should not have been rejected because the lands had at one time been classified as suitable for entry. However, the fact that certain of the lands may have been classified as suitable for desert land entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the

considered judgment of the classifier based upon evidence available at the time the classification is made, it is subject to revocation or revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954). 14/

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying ground water, does not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 15/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877 16/ as added, requires a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 17/ under the general regulatory authority of the Secretary of the Interior. 18/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing right of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 19/

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard E. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desired. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

14/ Requests for special land-use permits to drill and explore for water will not be issued where records indicate there is no water available for the irrigation of additional lands in the areas involved. See Peter W. Breene et al., Los Angeles 0148894, etc.

15/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).

16/ 19 Stat. 377, 43 U.S.C. 327

17/ 43 CFR, 1954 ed., Part 232

18/ R.S. § 2478, 43 U.S.C. 1201

19/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

After careful consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands in the following sections and townships are properly classified as unsuitable for further development for agricultural purposes:

T. 1 N., R. 19 E., S.B.M.,	California, sections 1 through 36	
T. 2 N., R. 18 E.,	same	same
T. 2 N., R. 19 E.,	same	same
T. 4 N., R. 18 E.,	same	same
T. 4 N., R. 19 E.,	same	same
T. 4 N., R. 22 E.,	same	same
T. 4 N., R. 24 E.,	same	same
T. 5 N., R. 19 E.,	same	same
T. 5 N., R. 22 E.,	same	same
T. 6 N., R. 22 E.,	same	same
T. 7 N., R. 2 W.,	same	same
T. 7 N., R. 3 W.,	same	same
T. 7 N., R. 5 W.,	same	same
T. 7 N., R. 7 W.,	same	same
T. 8 N., R. 3 E.,	same	same
T. 8 N., R. 4 E.,	same	same
T. 8 N., R. 5 E.,	same	same
T. 8 N., R. 2 W.,	same	same
T. 8 N., R. 3 W.,	same	same
T. 8 N., R. 5 W.,	same	same
T. 8 N., R. 6 W.,	same	same
T. 8 N., R. 7 W.,	same	same
T. 9 N., R. 1 E.,	same	same
T. 9 N., R. 4 E.,	same	same
T. 9 N., R. 2 W.,	same	same
T. 9 N., R. 3 W.,	same	same
T. 9 N., R. 4 W.,	same	same

Accordingly, the Manager's decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation desert land and homestead applications) for any above-described public lands are hereby rejected (see 43 CFR 221.31); and, until further notice, any such applications which may be hereafter filed for any of the public lands involved

will not be accepted for filing but will be returned to the applicant, accompanied by a notice stating that the lands have been classified as unsuitable for further agricultural entry and that no right of appeal lies from the refusal to accept the application for filing.

Edward Woozley
Director

Approved: September 25, 1959

Assistant Secretary of the Interior

DISTRIBUTION:

Each applicant listed in Appendices "A" through "H" (Regular Mail)
Mr. William Blair Dalbey, Attorney (Regular Mail)
Kronick & Mosdovitz (Regular Mail)
Lev, Lyon & Witmer (Regular Mail)
Messrs. John M. Ennis and J. S. Stanley (Regular Mail)
Mr. Wallace Trau (Regular Mail)
Hon. Thomas H. Kuchel, United States Senate
Hon. Clair Engle, United States Senate
Hon. H. Allen Smith, House of Representatives
Hon. James Roosevelt, House of Representatives
Hon. Clyde Doyle, House of Representatives
Hon. D. S. Saund, House of Representatives
Appeals List No. 1
Lands Staff Officer
CFG

Appendix "A"

Name	Serial No. (L.A.)
Martha K. Bongfeldt	0150912
Ethel C. Fitts	0151831
Elizabeth L. Herd	0151838
Wilbur E. Buelow	0152163
Octavia Nichols Simmons	0152192
Asa T. Davis	0152197
Ida Baxton Simmons	0152260
Robert Michael Mucica	0152761
Vern R. Buelow	0152868
Clyde E. Cobb	0153147
Sylvia Friedlander	0153417
Selma R. Ephraim	0153418
Ruth Ada Miln	0153493
Harry R. Taylor	0153808
Gordon T. Dresser	0155768
Miriam P. Fisher	0158733
Otis Harris	0159968
Harry G. Mainfold	0159358
John J. Fogarty	0159366
Roger Leroy Burrows	0160093
Leo George Flack	0160094
Peggy A. King	0160262

Name	Serial No. (L.A.)
Myron C. Martinov	0160343
Arthur Weber	0160360
Howard Averil Cowart	0160444
John P. Ostrander	0160470
Johnny S. Hawkins	0160568
George Kiss	0160614
Herbert Thompson Goodrich	0160647
Hans Karl Lange	0160682
William Jackson Hacker	0160695
Henry Walton Greene	0160777
William J. Uraine	0160807
Earl Walter Brumwell =	0161467
Ralph E. Kemprud	0161532
A. Bernice Kemprud	0161533
Buford G. Cain	0157759
Cloid E. Thornsberry	0157820
Wesley B. Johnson	0157970
Minnie B. Leight	0158963
Harry Zucker	0158964
Bronwen H. Brownmiller	0159025
Isadore Berger	0159066
Richard R. McGee	0159556
Richard H. Hardy	0159557
Lillian G. McGee	0159558
Dale W. Mathews	0159643

Name	Serial No. (L.A.)
Jeanette C. Morton	0159645
Jose H. Parga	0160893
William C. Justice	0152327
Gene S. Jantzen	0154291
Robert C. Alexander	0152605
Beechie "B" Walpole	0155849
John W. Hanaway	0152664
Thomas Edwin Jordan	0152672
Maxwell C. King	0152673
Christine Ann Jordan	0152709
James H. Forbes, Jr.	0152710
Emil L. deGraeve	0152711
Virginia R. deGraeve	0152712
Helen M. deGraeve	0152713
Shirley H. King	0152762
Clark L. King	0152763
Martha L. King	0152764
Maxwell Clark King, Jr.	0152765
Laurent G. Beaulieu	0152766
Elizabeth K. Draeger=	0152785
Henry H. Draeger	0152786
Manuel S. Pensack	0152860
Jack Efron	0152889
Harold J. Hendricks	0153032
Raymond B. Oliver	0153250

Name	Serial No. (L.A.)
Ernest M. Frost	0158574
Laurits A. Petersen	0151383
Ewald C. Redepenning	0151385
Walter E. Redepenning	0151417
Salvatore J. Grasso	0151675
Ollie M. Baldwin	0151726
Chester D. Andrews	0151761
Edward Sonn	0151762
Barney B. Hassen	0151789
Ada F. Brown	0151865
John Linden Herd	0151876
Artie McCarty	0151920
Clarence J. Boucher	0152164
Jean Rene Archambault	0152240
Thelka R. Keller	0152521
Frank De Fazio	0152992
Richard A. Kaminski	0153483
Chester M. Rosvig	0153484
John J. Kaminski	0153485
Leora Hunter	0154867
Joan E. Greenwood	0154596
Ruth E. Faircloth	0155740
Antoninette M. Atkinson	0155765
John E. Atkinson	0155766
Ruth Wells	0155854

Name	Serial No. (L.A.)
Benjamin F. Badgley	0155856
Adam Bonar	0155944
Myrtis Harland	0156002
Velva G. Christ	0159883
Louis James Scott	0160051
Clyde F. Hargan	0160052
William L. Newby	0160053
James Harris	0160054
Nona Uber	0160315
Clarence Adin Moore	0160367
Evelyn R. Page	0160497
Olga Anna Zyoboczky	0160581
Michael Szoboczky	0160584
Lyle Parker Chamberlin	0160755
Alfred Felice La Gardo	0162383
Manuel F. Alvarez	0143565
James L. Roberts	0152986
Virginia H. Warwick	0154818
Alice H. Warwick	0154819
Jesse A. Hoke	0156077
Marten Borg, Jr.	0161517
Neele Miena B. Borg	0161518
Joe Sanfilippo	0151564
Winifred M. Mummert	0151788
Iver A. Norman, Jr.	0151829

Name	Serial No. (L.A.)
Whitman W. Davis	0152118
Harold L. Greene	0153171
Joseph W. Blais	0153859
Donald Hamilton Silbaugh	0155099
James Cambel Safechuck	0155888
Mike Creed Meeken	0158548
Lawrence William Dunklin	0159447
Alfonzo Lawrence Dunklin	0159448
Edwin Elmer Koenke	0159449
Clarence W. Collins	0159624
Donald Dale Dawson	0160851
Nola Taylor Ewing	0157376

Appendix "B"

Name	Serial No. (L.A.)
Martha.E. Rutherford	0154505
Cora P. Hileman	0153780
Beatrice M. Slaughter	0154506
William Gary Jones	0156635
Anna Beamon	0159286

Appendix "C"

Name	Serial No. (L.A.)
Opal T. Sonne	0155404
James Louis Finks, Sr.	0155405
Gertrude Sanborn Puckett	0155406
Caroline Gertrude Sanborn	0155407
Frances Sanborn Finks	0155408
Jesse N. Dean	0156117
Hazel Dean Bale	0157382
John William Bale	0157383
Chesley Betice Smith	0158511
Jake Napoleon Avery	0158884
Carol Lee Wilcox	0160932
John Stefanuk	0160946
Vesta K. Urgello	0160436
Olga Lee Scarborough	0160475

Appendix "D"

Name	Serial No. (L.A.)
Clifton S. Endeman	0153820
Grier E. Orr	0153852
Charles B. Fullerton	0154235
Jack P. Nielsen	0154747
George N. Gray	0154748
Irene G. Kasulis	0154807
George I. Provost	0154808
Joan M. Anderson	0155820
Elsie G. Benwell	0151714

Appendix "E"

Name	Serial No. (L.A.)
Henry G. Bartholomew	0157949
Rebecca Longden Oliver	0157950
Charles Oswald Rowe	0157971
Elmer H. Bauer	0158091
Gerlydine E. Auster	0158092
Rose W. Zucker	0158093
Edith B. Shafer	0158576
Dr. Norman S. Shafer	0158577
William George	0158675
Jean Berger	0158842
Willard G. Hailey	0158968
Rose K. Childs	0158971
Esther Altounian	0159130
Highgazoun Altounian	0159131
J. Y. Dowdy	0159139
Robert G. Forester	0159359
Alonzo W. Elliott	0159360
Jan W. de Bruyn	0159361
Loren Leroy Kintner	0159445
Daniel Quinones	0159543
Ernst Lehnhof	0159638
Elizabeth M. Lehnhof	0159639
Myrtle A. Hayes	0159127

Name	Serial No. (L.A.)
Madeleine F. Eades	0159901
Donald R. McKim	0159994
Una R. Wood	0160495
Eunice L. Wood	0160496
William Norman Richter	0160565
Ermyle Noel Richter	0160566
Carl E. Burnett	0160683
Kermit S. Knutson	0160721
Harold F. Meyer	0161593
Joseph G. Sanchez	0162466

Appendix "F"

Name	Serial No. (L.A.)
Ida V. Clark	0123492
Mary W. Masson	0152526
Anthony Martin Plascjak	0156865
Edna Naomi Cotton	0160044
Nick John Fulgenzi	0160294
Candelario Chavez Chavez	0160441
Frederick D. May	0160762
Millie Elizabeth Nelson	0161548
Taylor Green Everett	0161549
John Allen Boyden	0162070
Pino Maurello	0162078
Lucile R. Quesada	0153047
Emeralds F. Hogan	0156896
Agnes M. Bailey	0161040
Dewey Miles	0161688
Charles Cotton	0159966
James Adrian Carter	0161787
Lonnie Duke Eberhardt	0162072

Appendix "G"

Name	Serial No. (L.A.)
John W. Beery	0143269

Appendix "H"

Name	Serial No. (L.A.)
Annie J. Sandrini	0150686
Sherman S. Smith	0150687

DESERT LAND * 3 Classification

A desert land application is properly rejected where the record reveals that water of a quality and quantity required for irrigated crop production is not available for the irrigation of the land.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record indicates that there is no ground water available in amounts required for irrigation.

Georgia Blaine et al., Los Angeles 0153231 etc. (September 25, 1959)
(Approved September 25, 1959 by Assistant Secretary of the Interior, Roger Ernst)

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In reply refer to:

Los Angeles 0153231 etc. 1/
0161195 etc. 2/
0143540 etc. 3/
0157866 etc. 4/

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1959

DECISION

Georgia Blaine et al. 1/ R. W. Woods et al. 2/ Henry R. Patzig et al. 3/ Veron Harold K. Sander et al. 4/	:	Desert Land Applications

Decisions of the Manager Affirmed

Georgia Blaine and the others listed on Appendices "A" through "D" (attached) have appealed from decisions of the Manager which rejected the applications for the stated reasons that the applications were not accompanied by proper showings as contemplated by the regulations, 43 CFR, 1954 ed., Part 232. 5/

The departmental regulation 43 CFR, 1954 ed., Part 232.10 provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means. Roy E. Brown, A-25935 (November 16, 1950). See also June C. Keane, A-27847 (February 17, 1959).

1/ The lands involved in these applications are located in the Salton Sea Area. For the names of the applicants and the corresponding land office serial number in each case, see Appendix "A".
2/ The lands are located in the Yuha Basin. For names and land office serial numbers, see Appendix "B".
3/ The lands are located in Davies Valley. For names and land office serial numbers, see Appendix "C".
4/ The lands are located in Ogilby Valley. For names and land office serial numbers, see Appendix "D".
5/ The applications listed in Appendices "A" and "C" were rejected by decisions of the Chief, Land Adjudication Unit.

However, irrespective of the issue of the sufficiency of the showings accompanying the applications, the desert land applications could not be properly allowed as there is no evidence in the record that water is available of such quality or in such quantity as would be required for the irrigation of the lands or that development of the lands is feasible by any practical means. Accordingly, the desert land applications must necessarily be rejected. See June C. Keane, supra. Also see Nick P. Leko et al., Los Angeles 0150165 etc., approved June 24, 1959.

The conclusion that the lands here involved are unfit for irrigated crop production is based on studies and reports concerning the geological and hydrological features of the areas in which the lands are located, statistics on the production and quality of water from wells in the vicinity of the lands, developments that have been accomplished on privately owned lands in the specific areas involved and other similar areas where the circumstances of land use and development are relatively similar.

As to the applications for lands in the vicinity of or adjacent to Coachella Valley and the Salton Sea (See Appendix "A" attached) certain of the lands are located on or near the shoreline of the Sea. The remainder of the tracts under application lie on the upland plains, hills, and valleys adjacent to Coachella Valley or the Salton Sea. The record shows that there are a number of wells in the immediate vicinity of the Salton Sea, however, it also indicates that the water from these wells is highly mineralized and unfit for irrigated crop production. Accordingly, desert land applications for lands lying at the lower elevations on or near the shoreline of the Salton Sea could not be properly allowed unless it could be shown that the water from wells is of a quality suitable for irrigated crop production. See Filemon O. Fuentes et al., A-27719 (November 13, 1958). With respect to the lands located on the uplands adjacent to Coachella Valley and the Salton Sea, there are a number of water wells throughout the area. However, the record indicates that none of these produce water in amounts required for irrigation and that many are dry or have been abandoned for other reasons. The conclusion that the lands are unfit for agricultural purposes is buttressed by the experiences of prior entrymen involving other similar type lands in the area, Claude H. Graham, Sr., A-26809 (February 8, 1954), and final proof has been rejected in other cases because the entrymen failed to reclaim the land within the entry period. See Margaret M. Redmond, A-25907 (August 21, 1950). Moreover, the record discloses that over 50 percent of the lands in the area, excluding areas embraced by the Coachella Irrigation District have been patented. Little, if any, of the patented lands outside the boundaries of an organized state irrigation district have been developed for agricultural purposes. The appellants have made no plausible showing that the lands are susceptible of development for irrigated crop production by any practical means. Neither have they shown that any of the privately owned lands in the vicinity that would be dependent upon ground water for an irrigation water supply and otherwise similar to the lands here involved have been successfully reclaimed for irrigated crop production. Accordingly, the desert land applications must necessarily be rejected. See June C. Keane, supra.

The lands embraced by the applications listed in Appendices "B" through "E" attached are located in a number of drainage basins in Southern Imperial County, California. This is a most arid region. The annual recharge to the ground water table is very small due to the low annual precipitation of the area. In fact, studies of the geological and hydrological features of the area reveal that the prospect of recovering water in amounts required for irrigation is extremely remote. See Max and Louise Heinegg A-25613 (May 31, 1949). The appellants have submitted no evidence to show that any lands located outside the limits of an organized irrigation district in the area have been successfully reclaimed for irrigated crop production or any plausible showing that the land here involved might be reclaimed by any practical means. In view of the foregoing circumstances, the lands could not be properly classified for desert land entry. Cf. June C. Keane, supra. Also see Richard G. Peeples 48 L.D. 554 (1922). Certain of the appellants have reported a well which they allege produces 200 gallons of water per minute. However, they have not cited the legal description on which the well is located nor would a production of 200 gallons per minute be sufficient for the irrigation of more than 20 or 25 acres of land. Certain of the appellants in Appendix "D" state that there is a well on "Gold Rock Ranch". However, they have reported no production for the well or shown that it is capable or producing water in amounts required for irrigation. The fact that there is a well at the "Vista Mine" some 2½ miles to the north and at a higher elevation than the lands here involved is not convincing evidence that water in amounts required for irrigation would be available to the lands in issue. See Dottie J. Beck et al., A-27884 (March 5, 1959).

Certain of the appellants in Appendix "D" also allege that their applications should not have been rejected because the lands had been classified as suitable for desert land entry in the past. However, the fact that certain of the lands may have been classified as suitable for that type of entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the considered judgment of the classifier based upon evidence available at the time of the classification, it is subject to revocation or revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954). 6/

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, does not foreclose a departmental determination under applicable Federal law of

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6/ Requests for special land use permits to drill and explore for water will not be issued where the record indicates there is no water available for the irrigation of the lands involved. See Peter W. Breene, et al., Los Angeles 0148994, etc.

the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 7/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877 8/ as added, required a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 9/ under the general regulatory authority of the Secretary of the Interior. 10/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing rights of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 11/

As to the appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard R. Noren et al., A-27147 (August 1, 1955). The appellants have had an opportunity to put into the record any information they desire. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for a hearing is denied. The decisions of the Manager are affirmed.

After careful consideration of all available data, including that offered by the appellants, we find that all of the public lands embraced in the following sections and townships are properly classified as unsuitable for agricultural development:

T. 3 S., R. 1 E., S.B.M. California, sections 1 thru 36
T. 6 S., R. 8 E., S.B.M. California, E½ Section 12
T. 6 S., R. 9 E., S.B.M. California, sections 1 thru 17
21 thru 28
34 thru 36
T. 7 S., R.10 E., S.B.M. California, sections 1 thru 15
23 thru 25
T. 7 S., R.11 E., S.B.M. California, sections 1 thru 36
T. 8 S., R.11 E., S.B.M. California, sections 1 thru 36
T. 8 S., R.12 E., S.B.M. California, sections 1 thru 36

7/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).
8/ 19 Stat. 377, 43 U.S.C. 327.
9/ 43 CFR, 1954 ed., Part 232.
10/ R. S. Section 2478, 43 U.S.C. 1201.
11/ See Ruby E. Huffman et al., supra, P. 60 and the California decisions cited therein.

T. 9 S., R.12 E., S.B.M. California, sections 1 thru 36
T.11 S., R.10 E., S.B.M. California, sections 1 thru 36
T.14 S., R.19 E., S.B.M. California, sections 1 thru 36
T.17 S., R. 9 E., S.B.M. California, sections 1 thru 36
T.17 S., R.10 E., S.B.M. California, sections 1 thru 36
T.17 S., R.11 E., S.B.M. California, sections 1 thru 36
T.17 S., R.12 E., S.B.M. California, sections 1 thru 36

Accordingly, the decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation desert land and homestead applications) for any above described public lands are hereby rejected (See 43 CFR 221.31); and, until further notice, any such application which may be hereafter filed for any of the public lands involved will not be accepted for filing but will be returned to the applicant, accompanied by a notice stating that the lands have been classified as unsuitable for agricultural entry and that no right of appeal lies from the refusal to accept the application for filing.

Edward Woozley
Director

Approved: September 25, 1959

Roger Ernst
Assistant Secretary of the Interior

DISTRIBUTION:
Each applicant listed in Appendices "A" thru "E" (Regular Mail)
Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Kindel and Anderson, Attorneys at Law (Regular Mail)
Hon. Thomas H. Kuchel, United States Senator
Hon. Clair Engle, United States Senator
Lands Staff Officer
Appeals list No. 1
CFG

APPENDIX "A"

Name of Applicant	Serial Number
Georgia Blaine	LA- 0153231
Raymond J. Linke	0153834
Henry M. Spacone	0160311
Frank Mock	0160316
Robert E. Lane	0160438
Robert A. Dresser	0154286
Josephine M. C. Purves-Smith	0155098
Doris J. Reeves	0155322
Eva Terr	0156784
Walter S. Lee	0157152
Jean M. Altschuler	0157247
Kenneth R. Pinckney	0158047
Nathan W. Miller	0158671
Art M. Agajanian	0158673
John Ainilian	0158674
Joe Agajanian	0158676
Tom T. Agajanian	0158677
Aram Agajanian	0158678
Brooks Michel Wilson	0154826
Charles Raymond Wilson, Jr.	0154827
Helen M. Dwyer	0154847
Terrance D. Thielen	0154889
Ida Imojean Susdorf	0157040
Earl Leonard Parker	0157041
Ragene Lee Leiske	0157151
Ernest Eugene Dahling	0157300
Mary Elizabeth Thielen	0154846
Willis Warren Allen	0162582
Paul Leo Freese	0158135

APPENDIX "B"

Name of Applicant	Serial Number
R. W. Woods	LA-0161195
George Thomas Crossland	0161591
Walter Adolph Marek	0161592
Leonard Glenn Baldwin	0161851
Sam Carl Bertolino	0162180
Walter Bailey, Jr.	0162182
Frieda Louise Folsom	0162567
James Ben Bailey	0162650
B. Bill Murad	0161017
William Victor Fay	0161282
Lilas V. Waltner	0161360
Verna Darlene Shelton	0161361
Owen B. Waltner	0161367
Albert W. Koenig	0161387
Margaret A. Baldwin	0161408
Roy A. Dobbs	0161409
Leon Barksdale	0161448
Margaret Nellene Thompson	0161449
Warren A. McCart	0161535
Augusta Camien Pfost	0161536
Onie Ann Crossland	0161538
Willie Webster Crossland	0161539
William David Bumsted, M.D.	0161540
Joe M. Costales	0161541
Antonio E. Velasco	0161542
E. C. Alonzo King	0161638
Rollin William Richter	0161639
Earl Henry Beck	0161641
Joseph Tardanico	0161642
Dominic Moceri	0161643
Arnold C. Arguilez	0161664
Oliver K. Woodall	0161677
Hector C. Lemus	0161736
Kenneth Dwight Baldwin	0161852
Irene Cook Whitehead	0161895
John Williams Roulac	0162116

(cont'd on next page)

APPENDIX "B" (cont'd)

Name of Applicant	Serial Number
Orionna Faith Mattfield	LA-0162117
Ralph David Palumbo	0162118
Joseph William Hikel	0162119
Vito Bertolino	0162181
Thaddeus Everett Wilson	0162183
Julius Ellis Chapman	0162435
George Allen Baker	0162384
Lee Alexander Galland	0162385
Leslie Francis Boring	0162513
Francis Milton Applegate	0162514
Henry Allan Stroing	0162515
Samuel Steven Stearns	0162516
David Fidel Esparza	0162517
Charles Herman Gerdes	0162518
Albert William Borchers	0162651
Weldon Truett Black	0163030
Geraldine E. Olsen	0163255
Leslie Hugh Cooke	0163307
Mildred Chapman	0162382

APPENDIX "C"

Name of Applicant	Serial Number
Henry R. Patzig	LA-0143540
Charles D. Patzig	0143541
James E. Schutte	0143542
Warren Everette Eberhardt	0154124
Ernest Calvin Moyer	0154169

APPENDIX "D"

Vernon H. K. Sander	LA-0157866
Sterling B. Sander	0157868
Fern E. Umberger	0157871
Jodie Fae Lyons	0158600
John Lyons	0158601
Barbara Lorelle Martin	0159058
O. Thomas Stall	0159699
John De Santis	0161088
Harold De Santis, Jr.	0161089

62479-59

DOCKET FILES

DESERT LAND * 3 Classification

A desert land application is properly rejected where the record reveals that water of a quality and quantity required for irrigated crop production is not available for the irrigation of the land.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record indicates that there is no ground water available in amounts required for irrigation.

Florence Irene Montalbano et al., Los Angeles 0158167, etc. (October 19,1959)
(Approved January 14, 1960 by Assistant Secretary of the Interior Roger Ernst)

DOCKET FILES

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles
0158167, etc. 1/
0149381, etc. 2/
0154836, etc. 3/
0154843, etc. 4/
0154595, etc. 5/
0156123, etc. 6/
0148787, etc. 7/
5.04g

DECISION

October 19, 1959

Florence Irene Montalbano et al. 1/	:	
Frances N. Sigler et al. 2/	:	
Raymond Felix Stevenson et al. 3/	:	Desert Land Applications
Clarilda Giguere 4/	:	
Ethel M. Greenwood et al. 5/	:	
Paul Gole et al. 6/	:	
Erwin E. Stephens, Sr., et al. 7/	:	

Decisions of the Manager and Chief, Lands Adjudication Unit, Affirmed

Florence Irene Montalbano and the others listed in Appendices "A" through "G" attached have appealed from decisions of the Manager and the Chief, Lands Adjudication Unit, which rejected their desert land applications because they were not accompanied by proper showings as contemplated by the regulations, 43 CFR, 1954 ed., Part 232.

The departmental regulation 43 CFR, 1954 ed., Part 232.10, provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. See Richard G. Peeples, 48 L.D. 554 (1922). He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means.

1/ For names of applicants and land office serial numbers see Appendix "A".
2/ See Appendix "B".
3/ See Appendix "C".
4/ See Appendix "D".
5/ See Appendix "E".
6/ See Appendix "F".
7/ See Appendix "G".

Martha K. Bongfeldt et al., Los Angeles 0150912, etc., approved September 25, 1959. In the absence of plausible evidence that the lands are susceptible of reclamation by some practical means desert land applications must necessarily be rejected. Roy N. Brown, A-25935 (November 16, 1950). Also see June C. Keane, A-27847 (February 17, 1959).

The circumstances involved in the applications here under consideration are enumerated in Appendices "A" through "G" attached.

Appendix "A"

The lands are located in the vicinity of Searles Lake, California. The record reveals that the ground water in Searles Valley is suitable only for general use around the chemical plants and that domestic water to supply the communities of Westend, Argus, and Trona is piped into the Valley from a distance of twenty miles.

The record also shows that there are approximately 3,000 acres of patented privately-owned lands in the southwest part of the Searles Lake area and in the vicinity of the lands here involved. However, none of these privately-owned lands have been reclaimed for irrigation purposes. Moreover, the record reveals that agricultural entries covering over 4,000 acres in the townships involved have been relinquished in the past. The irrigation wells referred to by the appellants are located in Indian Wells Valley which is entirely outside the boundaries of the Searles Lake drainage. Such information is not persuasive evidence that water either of a quality or quantity required for irrigation is available to the lands in issue. See Dottie J. Beck et al., A-27884, etc. (March 5, 1959). The appellants have made no persuasive showing either with their applications or their appeals that water of a quality and quantity required for irrigation is available for the irrigation of the lands or that the lands are susceptible of reclamation by irrigation.

Appendix "B"

The lands are located in Rice Valley, California. Studies of the geological features of the drainage area, records of stock water and domestic wells, and a long history of unsuccessful attempts to develop irrigation wells in Rice Valley indicate that there is insufficient ground water in the Valley for irrigation purposes. See Frances Elizabeth Cain et al., Los Angeles 0145092, etc., approved June 24, 1959.

Moreover, the record indicates that there are over 9,000 acres of privately-owned lands adjacent to the lands here involved in Rice Valley which would be suitable for irrigated crop production if water was available. However, there has been no showing that any of these privately-owned lands have been developed for irrigated production.

Appendix "C"

The lands covered by Los Angeles 0154836 are located in Lucerne Valley, California. Extensive investigations of ground water supplies in Lucerne Valley reveal that there is no water available for the irrigation of additional lands in the Valley. See Oscar O. H. Nelson et al., Los Angeles 0160613, etc., approved September 25, 1959. Accordingly, the application must be rejected.

The lands involved in the application of Arthur M. Thomas, Los Angeles 0160744 are located in Upper Johnson Valley, California. The record shows there are a number of dry holes at various locations throughout the Valley that have been abandoned. Some of these had been drilled to depths of 250 to 550 feet. Hydrological engineers of the Geological Survey have advised personnel of this Bureau that there is insufficient ground water in Johnson Valley for agricultural purposes due to the small watershed and the low annual precipitation within the drainage and that extensive pumping would lead to the total depletion of the ground water in the Valley. Moreover, the record indicates there are over 4,100 acres of privately-owned lands in Johnson Valley of which about 2,000 acres may be irrigable provided water is available and development of the land for agricultural purposes is feasible. However, it appears evident from the record including allegations of the appellants that no more than 60 or 70 acres of land in the Valley has ever been irrigated. See Oscar O. H. Nelson et al., supra.

The appeals in Los Angeles 0159884 and five others involve lands in Bessemer Valley, a small drainage adjacent to Johnson Valley. There is no irrigation in Bessemer Valley nor are there any known wells. Though there are approximately 4,480 acres of privately-owned lands in the Valley, most of which either adjoin or lie immediately adjacent to the lands here involved, none of these lands have been developed for irrigation purposes. The appellants have submitted no persuasive evidence either with their applications or their appeals that ground water is available in Bessemer Valley in amounts required for irrigation.

Appendix "D"

The land is located in Chuckawalla Valley, California. This Valley has been the subject of numerous investigations by this Bureau concerning the occurrence of ground water wherein it has been determined that the annual recharge to the ground water table is insufficient to permit any substantial agricultural developments and that all of the ground water within the drainage is already committed to use. See Oscar O. H. Nelson et al., supra. Accordingly, the desert land application must be rejected.

Appendix "E"

The lands are located in the Mojave River drainage in Southern California. The circumstances of water supplies available for irrigation in the Mojave River drainage have been the subject of extensive studies and the Department has consistently held that there is no water available for the irrigation of additional lands in the drainage. See Peter W. Breene et al., Los Angeles 0148894, etc., approved September 25, 1959, and cases cited. Accordingly, no further desert land applications can be properly allowed.

Appendix "F"

The lands are located in the El Mirage area. Records of this Bureau indicate that water is not available in amounts required for irrigation. Desert land applications for adjacent similar type lands have been consistently rejected. See Andrew T. Johnson et al., A-27305 (September 25, 1957). The fact that there are irrigation wells within the main drainage and "zone of influence" of the Mojave River is no persuasive evidence that water is available for the irrigation of the lands here involved. See Dottie J. Beck et al., supra. Nor do the plans accompanying the applications contain any information concerning development or equipment costs or other pertinent information to reasonably demonstrate that the lands are susceptible of development and use for irrigated crop production. See William H. Hazelwood et al., Los Angeles 0152336, etc., approved September 29, 1959, and cases cited.

Appendix "G"

The lands are located in Coachella Valley, California. Detailed studies of the area reveal there is no ground water available in amounts necessary for irrigation or of a quality required for irrigated crop production. See Georgia Blaine et al., Los Angeles 0153231, etc., approved September 25, 1959.

The appellants state in their applications that they propose to obtain water for the irrigation of the lands from the Dos Palmas Water District. The appeals were accompanied by a "validation complaint" dated December 6, 1957, purportedly demonstrating that the Dos Palmas Water District is organized under State law. By letter of July 16, 1959, to the Chief, Lands Adjudication Unit, Bureau of Land Management, Erwin E. Stephens, President of the Water District stated that the district proposes to deliver water to the lands in the area.

However, the appellants have furnished no information as to whether or not the water district is capable of delivering water for the irrigation of the lands. In fact, there is nothing in the record to show that the District owns any facilities for water delivery. Nor does the

record show that it has any specific plans for the construction of such facilities. The pertinent departmental regulation 43 CFR, 1954 ed., 232.14 states in applicable part as follows:

> "At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in the course of construction, or proposed to be constructed, i.e., reservoirs for storage, canals, flumes, or other methods by which the water is to be conserved and conveyed to the land; * * *. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated * * *."

Since the appellants have made no showing that an actual water supply is available for the irrigation of the lands or furnished any plans demonstrating that the lands are susceptible of development by any practical means, the applications must necessarily be rejected. See Roy N. Brown, supra.

Conclusion

Certain of the appellants allege that their applications should not have been rejected because the lands had at one time been classified as suitable for entry. However, the fact that certain of the lands may have been classified as suitable for desert land entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the considered judgment of the classifier based upon evidence available at the time the classification is made, it is subject to revocation or revision

upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954). 8/

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying ground water, does not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 9/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877, 10/ as added, requires a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 11/ under the general regulatory authority of the Secretary of the Interior. 12/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing right of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 13/

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard E. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desired. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

8/ Requests for special land-use permits to drill and explore for water will not be issued where records indicate there is no water available for the irrigation of additional lands in the areas involved. See Peter W. Breene et al., supra.

9/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).

10/ 19 Stat. 377, 43 U.S.C. 327

11/ 43 CFR, 1954 ed., Part 232

12/ R.S. § 2478, 43 U.S.C. 1201

13/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

After careful consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands in the following townships are properly classified as unsuitable for development for agricultural purposes:

T. 28 S., R. 40 E.,	M.D.M.,	California
T. 28 S., R. 41 E.,	"	"
T. 28 S., R. 42 E.,	"	"
T. 5 N., R. 1 E.,	S.B.M.,	"
T. 5 N., R. 4 E.,	"	"
T. 7 N., R. 7 W.,	"	"
T. 8 N., R. 7 W.,	"	"
T. 9 N., R. 1 E.,	"	"
T. 12 N., R. 7 E.,	"	"
T. 1 S., R. 20 E.,	"	"
T. 1 S., R. 21 E.,	"	"
T. 2 S., R. 21 E.,	"	"
T. 3 S., R. 21 E.,	"	"
T. 3 S., R. 22 E.,	"	"
T. 5 S., R. 15 E.,	"	"
T. 8 S., R. 12 E.,	"	"

Accordingly, the Manager's decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation desert land and homestead applications) for any above-described public lands are hereby rejected (see 43 CFR 221.31); and, until further notice, any such application which may be hereafter filed for any of the public lands involved will not be accepted for filing but will be returned to the applicant, accompanied by a notice stating that the lands have been classified as unsuitable for further agricultural entry and that no right of appeal lies from the refusal to accept the application for filing.

A notice in accordance with the above giving the basis for the classification and the effective date thereof will be published in the Federal Register (Notices Section).

Edward Woozley
Director

Approved: January 14, 1960

Assistant Secretary of the Interior

Distribution - Page 8

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Mr. Roger C. Donahue, Attorney at Law (Regular Mail)
Mr. John M. Ennis, Attorney at Law (Regular Mail)
Each applicant on Appendices "A" through "G"
Lands Staff Officer
Appeals List No. 1
CFG

A P P E N D I X "A"

Name of Applicant	Serial No.
	Los Angeles
Florence Irene Montalbano	0158167
Francis Bradbury, Sr.	0158168
Leo J. Helle	0158624
Frederick L. Cronn	0158972
LaVerne M. Palmer	0159128
Charles M. Wood	0159282
Bill C. Hart	0159342
Henry P. Palmer	0159444
John J. Bosland	0159568
Rita Peters	0159733
Joseph J. Evangelista	0159953
Robert G. Lambert	0160187
Joseph M. Kenney	0160263
Helen Lucille Lanz	0160935
Ruben M. Lanz	0160936
Florence B. Gravelle	0160975
Lloyd Cornelius Lubensky	0162028
George Mansfield Radecke	0162029
Carl Peter Detlef Nohle	0162030
Mary N. Glielmi	0162392

A P P E N D I X "B"

Name of Applicant	Serial No.
	Los Angeles
Frances N. Sigler	0149381
Juliana Kutlesa	0151757
Rosella M. Hitchings	0151890
Marshall H. Hitchings	0151891
Gordon Howard Moffat	0159923
Barbara Lee Moffat	0160426
Bertram Frank Borchard	0162046
Willadean Borchard	0162047
Neal Clifton Shadrick	0162634

A P P E N D I X "C"

Raymond Felix Stevenson	0154836
Mattie Lee Hixon	0159884
Cecil W. Hixon	0159885
Rufus F. Scott	0160645
Rosa Lee Scott	0160646
Arthur M. Thomas	0160744
Antonio Smith	0161515
Johnette B. Smith	0161516

A P P E N D I X "D"

Clarilda Giguere	0154843

A P P E N D I X "E"

Name of Applicant	Serial No.
	Los Angeles
Ethel M. Greenwood	0154595
Harry N. Arslanian	0155866
Georgia Nelle Tarkington	0160066

A P P E N D I X "F"

Paul Gole	0156123
Edward E. Greenspan	0156790
Frances G. Wayne	0156986

A P P E N D I X "G"

Erwin E. Stephens, Sr.	0148787
Robert F. Swancutt	0149296

LO (Sac)

DESERT LAND * 3 Classification

A desert land application is properly rejected where the record reveals that water of a quality and quantity required for irrigated crop production is not available for the irrigation of the land.

PUBLIC LANDS * 8 Special Land-Use Permit

An application for special land-use permit to drill a well and explore for water is properly rejected where the record indicates that there is no ground water available in amounts required for irrigation.

Florence Irene Montalbano et al., Los Angeles 0158167, etc. (October 19,1959)
(Approved January 14, 1960 by Assistant Secretary of the Interior Roger Ernst)

RO

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles
0158167, etc. 1/
0149381, etc. 2/
0154836, etc. 3/
0154843, etc. 4/
0154595, etc. 5/
0156123, etc. 6/
0148787, etc. 7/
5.04g

DECISION

October 19, 1959

Florence Irene Montalbano et al. 1/	:	
Frances N. Sigler et al. 2/	:	
Raymond Felix Stevenson et al. 3/	:	Desert Land Applications
Clarilda Giguere 4/	:	
Ethel M. Greenwood et al. 5/	:	
Paul Gole et al. 6/	:	
Erwin E. Stephens, Sr., et al. 7/	:	

Decisions of the Manager and Chief, Lands Adjudication Unit, Affirmed

Florence Irene Montalbano and the others listed in Appendices "A" through "G" attached have appealed from decisions of the Manager and the Chief, Lands Adjudication Unit, which rejected their desert land applications because they were not accompanied by proper showings as contemplated by the regulations, 43 CFR, 1954 ed., Part 232.

The departmental regulation 43 CFR, 1954 ed., Part 232.10, provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 1954 ed., 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land and that the land is of a character suitable for irrigated crop production. See Richard G. Peeples, 48 L.D. 554 (1922). He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation development by some practical means.

1/ For names of applicants and land office serial numbers see Appendix "A".
2/ See Appendix "B".
3/ See Appendix "C".
4/ See Appendix "D".
5/ See Appendix "E".
6/ See Appendix "F".
7/ See Appendix "G".

Martha K. Bongfeldt et al., Los Angeles 0150912, etc., approved September 25, 1959. In the absence of plausible evidence that the lands are susceptible of reclamation by some practical means desert land applications must necessarily be rejected. Roy N. Brown, A-25935 (November 16, 1950). Also see June C. Keane, A-27847 (February 17, 1959).

The circumstances involved in the applications here under consideration are enumerated in Appendices "A" through "G" attached.

Appendix "A"

The lands are located in the vicinity of Searles Lake, California. The record reveals that the ground water in Searles Valley is suitable only for general use around the chemical plants and that domestic water to supply the communities of Westend, Argus, and Trona is piped into the Valley from a distance of twenty miles.

The record also shows that there are approximately 3,000 acres of patented privately-owned lands in the southwest part of the Searles Lake area and in the vicinity of the lands here involved. However, none of these privately-owned lands have been reclaimed for irrigation purposes. Moreover, the record reveals that agricultural entries covering over 4,000 acres in the townships involved have been relinquished in the past. The irrigation wells referred to by the appellants are located in Indian Wells Valley which is entirely outside the boundaries of the Searles Lake drainage. Such information is not persuasive evidence that water either of a quality or quantity required for irrigation is available to the lands in issue. See Dottie J. Beck et al., A-27884, etc. (March 5, 1959). The appellants have made no persuasive showing either with their applications or their appeals that water of a quality and quantity required for irrigation is available for the irrigation of the lands or that the lands are susceptible of reclamation by irrigation.

Appendix "B"

The lands are located in Rice Valley, California. Studies of the geological features of the drainage area, records of stock water and domestic wells, and a long history of unsuccessful attempts to develop irrigation wells in Rice Valley indicate that there is insufficient ground water in the Valley for irrigation purposes. See Frances Elizabeth Cain et al., Los Angeles 0145092, etc., approved June 24, 1959.

Moreover, the record indicates that there are over 9,000 acres of privately-owned lands adjacent to the lands here involved in Rice Valley which would be suitable for irrigated crop production if water was available. However, there has been no showing that any of these privately-owned lands have been developed for irrigated production.

Appendix "C"

The lands covered by Los Angeles 0154836 are located in Lucerne Valley, California. Extensive investigations of ground water supplies in Lucerne Valley reveal that there is no water available for the irrigation of additional lands in the Valley. See Oscar O. H. Nelson et al., Los Angeles 0160613, etc., approved September 25, 1959. Accordingly, the application must be rejected.

The lands involved in the application of Arthur M. Thomas, Los Angeles 0160744 are located in Upper Johnson Valley, California. The record shows there are a number of dry holes at various locations throughout the Valley that have been abandoned. Some of these had been drilled to depths of 250 to 550 feet. Hydrological engineers of the Geological Survey have advised personnel of this Bureau that there is insufficient ground water in Johnson Valley for agricultural purposes due to the small watershed and the low annual precipitation within the drainage and that extensive pumping would lead to the total depletion of the ground water in the Valley. Moreover, the record indicates there are over 4,100 acres of privately-owned lands in Johnson Valley of which about 2,000 acres may be irrigable provided water is available and development of the land for agricultural purposes is feasible. However, it appears evident from the record including allegations of the appellants that no more than 60 or 70 acres of land in the Valley has ever been irrigated. See Oscar O. H. Nelson et al., supra.

The appeals in Los Angeles 0159884 and five others involve lands in Bessemer Valley, a small drainage adjacent to Johnson Valley. There is no irrigation in Bessemer Valley nor are there any known wells. Though there are approximately 4,480 acres of privately-owned lands in the Valley, most of which either adjoin or lie immediately adjacent to the lands here involved, none of these lands have been developed for irrigation purposes. The appellants have submitted no persuasive evidence either with their applications or their appeals that ground water is available in Bessemer Valley in amounts required for irrigation.

Appendix "D"

The land is located in Chuckawalla Valley, California. This Valley has been the subject of numerous investigations by this Bureau concerning the occurrence of ground water wherein it has been determined that the annual recharge to the ground water table is insufficient to permit any substantial agricultural developments and that all of the ground water within the drainage is already committed to use. See Oscar O. H. Nelson et al., supra. Accordingly, the desert land application must be rejected.

Appendix "E"

The lands are located in the Mojave River drainage in Southern California. The circumstances of water supplies available for irrigation in the Mojave River drainage have been the subject of extensive studies and the Department has consistently held that there is no water available for the irrigation of additional lands in the drainage. See Peter W. Breene et al., Los Angeles 0148894, etc., approved September 25, 1959, and cases cited. Accordingly, no further desert land applications can be properly allowed.

Appendix "F"

The lands are located in the El Mirage area. Records of this Bureau indicate that water is not available in amounts required for irrigation. Desert land applications for adjacent similar type lands have been consistently rejected. See Andrew T. Johnson et al., A-27305 (September 25, 1957). The fact that there are irrigation wells within the main drainage and "zone of influence" of the Mojave River is no persuasive evidence that water is available for the irrigation of the lands here involved. See Dottie J. Beck et al., supra. Nor do the plans accompanying the applications contain any information concerning development or equipment costs or other pertinent information to reasonably demonstrate that the lands are susceptible of development and use for irrigated crop production. See William H. Hazelwood et al., Los Angeles 0152336, etc., approved September 29, 1959, and cases cited.

Appendix "G"

The lands are located in Coachella Valley, California. Detailed studies of the area reveal there is no ground water available in amounts necessary for irrigation or of a quality required for irrigated crop production. See Georgia Blaine et al., Los Angeles 0153231, etc., approved September 25, 1959.

The appellants state in their applications that they propose to obtain water for the irrigation of the lands from the Dos Palmas Water District. The appeals were accompanied by a "validation complaint" dated December 6, 1957, purportedly demonstrating that the Dos Palmas Water District is organized under State law. By letter of July 16, 1959, to the Chief, Lands Adjudication Unit, Bureau of Land Management, Erwin E. Stephens, President of the Water District stated that the district proposes to deliver water to the lands in the area.

However, the appellants have furnished no information as to whether or not the water district is capable of delivering water for the irrigation of the lands. In fact, there is nothing in the record to show that the District owns any facilities for water delivery. Nor does the

record show that it has any specific plans for the construction of such facilities. The pertinent departmental regulation 43 CFR, 1954 ed., 232.14 states in applicable part as follows:

> "At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in the course of construction, or proposed to be constructed, i.e., reservoirs for storage, canals, flumes, or other methods by which the water is to be conserved and conveyed to the land; * * *. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated * * *."

Since the appellants have made no showing that an actual water supply is available for the irrigation of the lands or furnished any plans demonstrating that the lands are susceptible of development by any practical means, the applications must necessarily be rejected. See Roy N. Brown, supra.

Conclusion

Certain of the appellants allege that their applications should not have been rejected because the lands had at one time been classified as suitable for entry. However, the fact that certain of the lands may have been classified as suitable for desert land entry at some time in the past does not preclude the reclassification of the lands at any time where appropriate. Cf. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Such a classification is not immutable. While it may represent the considered judgment of the classifier based upon evidence available at the time the classification is made, it is subject to revocation or revision

upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, 61 I.D. 277, 278 (1954). 8/

The fact that State law governs generally the existence or the acquisition of a right to use water for irrigating a desert land entry, or that a person has a State permit to use underlying ground water, does not foreclose a departmental determination under applicable Federal law of the sufficiency of the water supply to justify acceptance of additional desert land entries. Availability of water in any area of limited supply is of controlling importance in determining under Federal law the suitability of public lands for entries of this type. 9/ All existing entitlements are to be considered. Indeed, section 4 of the Desert Land Act of March 3, 1877, 10/ as added, requires a showing in the plans submitted by desert land entrymen of sufficient water to irrigate thoroughly and reclaim the lands. This is implemented by detailed regulations issued 11/ under the general regulatory authority of the Secretary of the Interior. 12/ These administrative implementations and the determinations made under applicable Federal law do not constitute efforts either to establish or prejudge existing right of landholders to the use of water under applicable provisions of State law. The extent of a correlative right or an appropriative right of a private landholder in California to use water is determined generally by the laws of that State. 13/

As to appellants' request for a hearing, a hearing is not held as a matter of right in classifying public lands. Cf. Leonard E. Noren et al., A-27147 (August 1, 1955). The appellants have had the opportunity to put into the record any information they desired. In Margaret A. Andrews et al., 64 I.D. 9 (1957) the Department stated that a hearing will not be granted where there is no reasonable likelihood that it would develop facts decisive of the issues and no showing has been made by the appellants that they would be able to present evidence controverting the facts of record. Accordingly, the request for hearing is denied. The decisions of the Manager are affirmed.

8/ Requests for special land-use permits to drill and explore for water will not be issued where records indicate there is no water available for the irrigation of additional lands in the areas involved. See Peter W. Breene et al., supra.

9/ See Ruby E. Huffman et al., 64 I.D. 57, 69-70 (1957).

10/ 19 Stat. 377, 43 U.S.C. 327

11/ 43 CFR, 1954 ed., Part 232

12/ R.S. § 2478, 43 U.S.C. 1201

13/ See Ruby E. Huffman et al., supra, p. 60 and the California decisions cited therein.

After careful consideration of all available relevant data, including that offered by the appellants, we find that all of the public lands in the following townships are properly classified as unsuitable for development for agricultural purposes:

T. 28 S., R. 40 E.,	M.D.M.,	California
T. 28 S., R. 41 E.,	"	"
T. 28 S., R. 42 E.,	"	"
T. 5 N., R. 1 E.,	S.B.M.,	"
T. 5 N., R. 4 E.,	"	"
T. 7 N., R. 7 W.,	"	"
T. 8 N., R. 7 W.,	"	"
T. 9 N., R. 1 E.,	"	"
T. 12 N., R. 7 E.,	"	"
T. 1 S., R. 20 E.,	"	"
T. 1 S., R. 21 E.,	"	"
T. 2 S., R. 21 E.,	"	"
T. 3 S., R. 21 E.,	"	"
T. 3 S., R. 22 E.,	"	"
T. 5 S., R. 15 E.,	"	"
T. 8 S., R. 12 E.,	"	"

Accordingly, the Manager's decisions rejecting the desert land applications involved in the present appeals are affirmed; all agricultural applications now pending (including without limitation desert land and homestead applications) for any above-described public lands are hereby rejected (see 43 CFR 221.31); and, until further notice, any such application which may be hereafter filed for any of the public lands involved will not be accepted for filing but will be returned to the applicant, accompanied by a notice stating that the lands have been classified as unsuitable for further agricultural entry and that no right of appeal lies from the refusal to accept the application for filing.

A notice in accordance with the above giving the basis for the classification and the effective date thereof will be published in the Federal Register (Notices Section).

Edward Woozley
Director

Approved: January 14, 1960

Assistant Secretary of the Interior

Distribution - Page 8

DISTRIBUTION:

Mr. William Blair Dalbey, Attorney at Law (Regular Mail)
Mr. Roger C. Donahue, Attorney at Law (Regular Mail)
Mr. John M. Ennis, Attorney at Law (Regular Mail)
Each applicant on Appendices "A" through "G"
Lands Staff Officer
Appeals List No. 1
CFG

A P P E N D I X "A"

Name of Applicant	Serial No.
	Los Angeles
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Francis Bradbury, Sr.	0158168
Leo J. Helle	0158624
Frederick L. Cronn	0158972
LaVerne M. Palmer	0159128
Charles M. Wood	0159282
Bill C. Hart	0159342
Henry P. Palmer	0159444
John J. Bosland	0159568
Rita Peters	0159733
Joseph J. Evangelista	0159953
Robert G. Lambert	0160187
Joseph M. Kenney	0160263
Helen Lucille Lanz	0160935
Ruben M. Lanz	0160936
Florence B. Gravelle	0160975
Lloyd Cornelius Lubensky	0162028
George Mansfield Radecke	0162029
Carl Peter Detlef Nohle	0162030
Mary N. Glielmi	0162392

A P P E N D I X "B"

Name of Applicant	Serial No.
	Los Angeles
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Juliana Kutlesa	0151757
Rosella M. Hitchings	0151890
Marshall H. Hitchings	0151891
Gordon Howard Moffat	0159923
Barbara Lee Moffat	0160426
Bertram Frank Borchard	0162046
Willadean Borchard	0162047
Neal Clifton Shadrick	0162634

A P P E N D I X "C"

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Mattie Lee Hixon	0159884
Cecil W. Hixon	0159885
Rufus F. Scott	0160645
Rosa Lee Scott	0160646
Arthur M. Thomas	0160744
Antonio Smith	0161515
Johnette B. Smith	0161516

A P P E N D I X "D"

Clarilda Giguere	0154843

A P P E N D I X "E"

Name of Applicant	Serial No.
	Los Angeles
Ethel M. Greenwood	0154595
Harry N. Arslanian	0155866
Georgia Nelle Tarkington	0160066

A P P E N D I X "F"

Paul Gole	0156123
Edward E. Greenspan	0156790
Frances G. Wayne	0156986

A P P E N D I X "G"

Erwin E. Stephens, Sr.	0148787
Robert F. Swancutt	0149296

DESERT LAND * 2 Application

A desert land application for lands withdrawn for reclamation purposes cannot be properly suspended but must be rejected.

11-2-59

William L. Ross, Los Angeles 0162215 (Nov. 2, 1959)

DESERT LAND Application

A desert land application for lands withdrawn for reclamation purposes cannot be properly suspended but must be rejected.

William L. Hosa, Los Angeles 016221 (Co. - 7, 1)

In reply refer to:

Los Angeles 0162215
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 2, 1959

Certified Mail
Return Receipt Requested

DECISION

William L. Ross : Desert Land Application

Decision of Lands Adjudication Unit Affirmed

William L. Ross has appealed from a decision of the Lands Adjudication Unit, which rejected his application for the reason that the lands had been withdrawn for reclamation purposes.

The record shows that the lands were withdrawn for reclamation purposes by First Form withdrawal of October 22, 1920, under section 3 of the act of June 17, 1902, as a part of the Yuma Irrigation Project. The lands have not been restored to entry. Lands so withdrawn are not subject to agriculture entry. Alma Everett Morris et al., A-27235 (December 12, 1955).

The appellant is at liberty to file with the Manager a petition for the restoration of the land, however, a desert land application cannot be suspended pending the outcome of an application for restoration of the lands by the Manager, but must be rejected. Elmer U. Wright, A-26975 (December 27, 1954). In the event a petition for restoration is filed and the lands are restored to entry, the appellant would have no preference right of entry on the basis of his present application. George D. McGhee et al., A-26325 (February 15, 1952). Moreover, the lands if and when they are restored will be subject to application by the State of California for a period of not less than six months following the date of restoration in accordance with the provisions of the Public Law 85-771, 72 Stat. 928 of August 27, 1958.

Therefore, the decision of the Chief, Lands Adjudication Unit is affirmed.

William L. Ross is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Jones

Enclosure

DISTRIBUTION:
Mr. William L. Ross (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

63957-59

DESERT LAND * 4 Proof: Extension of time

The Bureau has no authority to grant extensions of time for the reclamation of land included within a desert land entry beyond the period authorized by the act of February 25, 1925.

Garland A. Smith, Helen Smith, Los Angeles 056461, 056487 (November 12, 1959)

DESERT LAND - A Special Extension of Time

The Bureau has no authority to grant extensions of time for the relamation of land included within a desert land entry beyond the period authorized by the act of February 25, 1925.

Gerald A. Smith, Solon Smith, Los Angeles 0550484, 0550487 (November 12, 1959)

In reply refer to:

Los Angeles 056461
056487
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Garland A. Smith and Helen Smith	:	Desert Land Entries

Decision of the Chief Lands Adjudication Unit Modified
Cases Remanded

The above named parties, husband and wife who have made adjoining desert land entries, have appealed from decisions of the Chief, Lands Adjudication Unit, Los Angeles, California, dated January 29, 1959, granting three year extensions of entry dating from December 6, 1955, and at the same time notifying them of the expiration of these extensions. The appellants do not contest the decision as such, but request an additional extension of time within which to submit final proof.

By a decision of April 11, 1951, the Acting Regional Administrator granted, under authority of the act of March 28, 1908, (35 Stat. 52: 43 U.S.C. 1952 ed., sec. 333), a three year extension of each of the entries in question. These decisions extended the lives of the entries to September 4, 1953. By decisions of December 6, 1954, the Manager granted a second three year extension of each entry under the act of April 30, 1912, (43 U.S.C., 1952 ed., sec. 334). The effect of these decisions was to extend the lives of the entries to September 4, 1956. However, the Manager, in these decisions of December 6, 1954, erroneously stated that the new expiration dates of the entries were September 4, 1953. This resulted in confusion to all concerned and on December 7, 1955, the Land Office erroneously issued expiration notices to the appellants.

Subsequently, in decisions of January 27, 1959, the Manager granted a third extension of time for a period of three years on each entry under authority of the act of February 25, 1925, (43 Stat. 982: 43 U.S.C., 1952 ed., sec 336). This extended the lives of the entries to September 4, 1959.

The appellants' request for further extensions must be denied because there is no authority under which additional extensions of time

for making final proof may be allowed on these entries. 43 CFR 232.36 through 232.37; Donald K. McLennan, 53 L.D. 21 (1930).

Since the statutory life of each entry in question has expired, the cases are remanded to the Manager for issuance of a statutory notice of expiration of the entries. The appellants will be required to submit final proof on their entries in accordance with 43 CFR 232.34.

Garland A. and Helen Smith are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Director

Enclosure

DISTRIBUTION:

Hon. Chet Hollifield, House of Representatives
Mr. Garland A. Smith (Certified Mail)
Mrs. Helen Smith (Certified Mail)
Lands Staff Officer (2)
Appeals List No. 1
LLM

DESERT LAND * 2 Application

Lands withdrawn as a part of a national forest are not subject to desert land entry.

Charles R. Hall, Los Angeles 0148999 (December 17, 1959)

In reply refer to:

Los Angeles 0148999
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 17, 1959

Certified Mail
Return Receipt Requested

DECISION

Charles R. Hall	:	Desert Land Application

Decision of the Chief, Land Adjudication Unit, Affirmed as Modified

Charles R. Hall has appealed from a decision of the Chief, Land Adjudication Unit, which rejected his desert land application because it was not accompanied by proper showings as contemplated by the regulations in 43 CFR, 1954 ed., 232.

Irrespective of the issue of the adequacy of the application, the record shows that all of the lands in T. 5 S., R. 6 W., S.B.M., California, the township wherein the land lies, were withdrawn as a part of the Trabuco Canyon National Forest by proclamation of February 25, 1893,* for management and use in accordance with the act of March 3, 1891 (26 Stat. 1095-1103). There is no provision of law which provides for desert land entries to lands included within a national forest. See 43 CFR, 1954 ed., 232.3. Therefore, the application must necessarily be rejected and the decision of the Chief, Land Adjudication Unit, is hereby affirmed.

Charles R. Hall is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

A. H. Brown

Enclosure

---

* By Executive Order of July 2, 1908, the San Jacinto and Trabuco Canyon National Forests were consolidated and redesignated as the Cleveland National Forest.

DISTRIBUTION:

Mr. Charles R. Hall (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

65372

DOCKET FILES

DESERT LAND * 2 Application

A desert land applicant for lands to be irrigated from wells must furnish plausible presumptive evidence that water is available for the irrigation of the lands along with a showing that the lands are of a character suitable for irrigated crop production. He must also submit a plan of irrigation completed in sufficient detail to reasonably demonstrate that the lands are susceptible of irrigation by some practical means.

Hubert S. Munson et al., Sacramento 057275, etc. (December 31, 1959)

Jackson — L.A. 01154 1954
appeal to Sec

In reply refer to:

Sacramento 057275
057276
Los Angeles 0154154
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 31, 1959

Certified Mail
Return Receipt Requested

DECISION

Hubert S. Munson Emily A. Munson Newton J. Jackson	: : :	Desert Land Applications

Further Showings Required

Hubert S. Munson, applicant Sacramento 057275; Emily A. Munson, applicant Sacramento 057276; and Newton J. Jackson, applicant Los Angeles 0154154, have appealed from decisions of the Managers and the Chief, Land Adjudication Unit which rejected their desert land applications because they were not accompanied by proper showings as contemplated by the regulations in 43 CFR, 1954 ed., Part 232.

The regulation 43 CFR, 232.10, provides that a desert land applicant must state that he is personally acquainted with the land and furnish certain other information as outlined in the application Form 4-274. The regulation 43 CFR, 232.14 also provides that at the time of filing the application with the Manager, the applicant must submit a map of the proposed development and a summary statement of facts demonstrating that an adequate irrigation water supply is available for the irrigation of the land 1/ and that the land is of a character suitable for irrigated crop

1/ In the case of Mullen v. Keaster, 44 L.D. 161 (1915), the Department stated in applicable part that the Desert Land Act contemplates that an entryman thereunder shall show a permanent and feasible source of water supply sufficient to irrigate all of the land entered or as much thereof as is susceptible of irrigation and to keep it permanently irrigated.

production. See Richard G. Peeples, 48 L.D. 554 (1922). He must also submit a plan of the proposed irrigation development completed in sufficient detail to reasonably demonstrate that the land is susceptible of irrigation development by some practical means. Martha K. Bongfeldt et al., Los Angeles 0150912 etc., approved September 25, 1959. In the absence of plausible evidence that the land is susceptible of reclamation by some practical means, desert land applications must necessarily be rejected. Roy N. Brown, A-25935 (November 16, 1950). Also see June C. Keane, A-27847 (February 17, 1959).

On the other hand when applications are received which show evidence of a carefully and completely analyzed situation which indicates that final proof under the desert land laws is possible and when this evidence can be confirmed by field examination by this Bureau, desert land entries may be entertained.

The material submitted by the desert land applicants has been carefully reviewed. This material is insufficient to warrant the conclusion that the lands are agricultural in character. In the circumstances, the Bureau is not justified in expending public funds for the investigation of the lands since the showings submitted by the applicants, even if verified, are not sufficient to reasonably demonstrate that reclamation of the land is feasible.

The data enumerated in Exhibit I attached is the kind of information would enable the Department to make an informed determination as to the sufficiency of the water supply and the feasibility of the applicant's proposed plan for the development of the land and for the construction of the necessary water delivery and distribution system to convey water to the irrigable portions of the land. Failure to furnish every specific detail in the manner outlined in the Exhibit will not necessarily result in a determination that the showing tendered by the applicant is insufficient. However, a proper plan must be completed in such a manner and in sufficient detail to demonstrate that the proposed development is feasible by some practical means. 2/

2/ The application of Newton J. Jackson, Los Angeles 0154154, contains a statement of the Secretary of the Imperial Irrigation District that the land is located within the service area as defined in the All-American Canal Contract of December 1, 1922 and that water for the irrigation of the land will be delivered when the land is ready for irrigation. Such a statement by an official of an organized irrigation district which has been properly approved in compliance with the regulation in 43 CFR, 1954 ed., 231.1 is satisfactory evidence that water is available for the irrigation of the land involved. However, the applicant has not submitted a plan for developing the land from which it is possible to determine whether or not the irrigation development proposed is feasible. (Accordingly, the requirements outlined in parts (a) and (b) of the attached Exhibit I do not pertain to this case).

Hubert S. Munson, Emily A. Munson, and Newton J. Jackson are allowed 60 days from receipt of this decision in which to file with the Director, Bureau of Land Management, Washington 25, D. C., plans of irrigation and other data as indicated above. If appropriate showings are filed within the 60-day period allowed, the cases will be remanded to the field for further appropriate consideration of the applications and the applications will be allowed if the lands can be properly classified as suitable for desert land entry and all else is regular. If the appropriate showings are not filed within the time allowed, the applications will stand rejected and the cases will be closed without further notice.

Hubert S. Munson and the two other applicants are allowed the right of appeal to the Secretary of the Interior. If an appeal is taken it must be filed within 30 days from receipt of this decision in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. Pincolo

Enclosure

DISTRIBUTION:
Mr. William Blair Dalbey (Attorney at Law) (Certified Mail)
Mr. Hubert S. Munson (Regular Mail)
Mrs. Emily A. Munson (Regular Mail)
Mr. Newton J. Jackson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

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Robert S. Munson and the two other applicants are allowed the right of appeal to the Secretary of the Interior. If an appeal is taken it must be filed within 30 days from receipt of this decision in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1265. The filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $15. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. William Blair Dalbey (Attorney at Law) (Certified Mail)
Mr. Robert S. Munson (Regular Mail)
Mrs. Emily A. Munson (Regular Mail)
Mr. Newton J. Jackson (Certified Mail)
Lands Staff Officer
Appeals List No. 1
C&D

EXHIBIT I, Part (a)

Evidence of Water Supply (Where irrigation water is to be obtained from wells to be drilled upon the lands sought.)

(1) Evidence of existing wells in the vicinity to include the following:

(a) Legal description of the lands on which the wells are located.

(b) Type of well (irrigation, stockwater, domestic, or other).

(c) Diameter of well in inches.

(d) Over-all depth, depth to static water level, and drawdown under maximum pumping in feet.

(e) Rate of discharge in miners inches or cubic second feet under maximum pumping.

(f) Size and type pump used.

(g) Type of distribution system (Sprinkler or gravity)

(h) Size and type power plant used.

(i) The number of acres irrigated from each well and the acres by type of crops produced.

(j) Legal descriptions of lands irrigated.

(2) In addition to (1) above, an applicant should also furnish any information available from the State Engineer's Office or other technical information or advice concerning the amount of water in the ground water basin that is available for the irrigation of the land under application.

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EXHIBIT I, Part (b)

Quality of Water (A proper showing as to the quality of the water may be accomplished by one of the following)

(1) Evidence of the production of crops on lands irrigated from the same source of water supply as the proposed entry.

(2) Results of laboratory tests of the mineral content of the proposed water supply.

(3) If information as in (1) or (2) is not available then applicant may furnish in lieu thereof any information available from technical publications or statements or opinions of officials of the state engineer's office, Department of Agriculture, agricultural experiment stations, farm real estate appraisers, or other reliable sources hearing on the suitability of the proposed water supply for the production of the types of crops to be produced.

EXHIBIT I, Part (c)

Character of the land (A proper showing should reveal the following)

(1) Altitude in feet and growing season in days.

(2) The type and distribution of the principle soil types within each legal subdivision under application showing:

(a) Depth of top soil in inches or feet.

(b) Texture of top soil.

(c) Permeability of the subsurface.

(d) Type of base material

(e) Wetness, overflow, or salinity (Where these occur the circumstances should be fully described). The circumstances of (b), (c), (d), and (e) above should be described in terms of some standard terminology such as employed by the agricultural experiment stations, Department of Agriculture, professional appraisal manuals, or other recognized standards.

EXHIBIT I, Part (c), (cont.)

(3) Topography of the land.
Describe in detail any variations in the topography of each legal subdivision under application showing t the percent of slope. If the land is to be irrigated by gravity flow then any subdivisions that slope in one or more directions should be clearly indicated. (The topographical features of the land can be most effectively shown by use of a contour map having a contour interval of 20 feet or less).

(4) The approximate irrigable area of each legal subdivision under application should be clearly shown.

EXHIBIT I, Part (d)

Plan of Irrigation and showing as to feasibility of development

(1) The plan of irrigation should consist of the following:

(a) A map sufficiently definite and accurate to show the plan for conducting water to the land to be irrigated in accordance with section 4 of the Act of March 3, 1877, as amended (43 U.S.C., 1952 ed., 327). 4/

(b) A summary statement showing in addition to the map in (a) above as may be required to fully describe the irrigation works and equipment to be installed in accordance with the proposed plan of development as outlined under (2) below.

(2) The plan of irrigation should show:

(a) The size and capacity, type, model or other appropriate specifications of all installations and equipment such as enumerated under (1) through (3) below. /The location and distribution of all installations and equipment items should be clearly shown on the map or otherwise in addition to other requirements listed under items (1) through (3) below/ The works may include one or more of the following:

1. Proposed construction
   (a) Reservoirs--specify types of materials, cubic yards of cut or fill, acre feet capacity and annual and seasonal rate of recharge in acre feet, or other.
   (b) Dam or diversion works-specify types of materials, cubic yards of cut or fill or other.
   (c) Pumping sites - specify cubic yards of cut or fill, footings, foundations, or other structures.
   (d) Power line - specify miles
   (e) Headgates, canals, ditches, flumes or pipelines - specify capacity in cubic feet per second or miners inches, length in feet where applicable, types of materials and construction where applicable.

4/ Preferably but not necessarily prepared by a licensed engineer.

EXHIBIT I, Part (d) (cont.)

(f) Wells-diameter of casing in inches; anticipated over-all depth and depth to static water level in feet; expected drawdown water level in feet under continuous pumping; output of well in cubic second feet or miners inches, or other applicable.

(g) Land clearing and leveling - specify numbers of acres, types of materials to be cleared, anticipated cubic yards of cut or fill per legal subdivisions involved, or other applicable.

2. Proposed Equipment

(a) Pump and motor assembly-specify type, make, model, horse power of motor, capacity of pump in cubic second feet or miners inches, or other applicable.

(b) Transformer - Specify make, model, number of phases, or other applicable.

3. Field distribution systems

The size in cubic second feet or miners inches and the location and distribution of all of the principle field ditches, pipe lines, headgates or pumps, or other installations or equipment items.

(a) Gravity systems

(1) For flood irrigation from contour laterals show capacity in cubic second feet or miners inches, and location and distribution of all laterals, direction of irrigation, percent of slope of the land and the length of slopes in feet of the land to be flooded.

(2) For border irrigating show direction of irrigation the percent slope of the land between borders, the width of panels between borders, and the width and height of the borders.

(3) For corrigations or furrows show furrow spacing and grade or percent slope of furrows.

(4) For other types of distribution layout specify details as in (1) through (3) above.

(b) For overhead or sprinkler systems show the field distribution; size in inches and length in feet of all mainlines and lateral lines; spacing of lateral lines and sprinkler heads; size, type, and capacity in gallons per minute of outlet valves and sprinkler heads; number of acres to be irrigated, number of sets required per irrigation, percent slope of the lands to be irrigated.

(3) Summary estimate of all construction and equipment costs.

(4) Crops to be produced.

(1) Acres by types of crops to be grown.
(2) Types of crops typical to area and average yields for area.
(3) Crop yields anticipated.
(4) Water requirements per acre in acres inches per month or other standard measure. (If crops proposed to be grown and yields anticipated differ from the average for the area or other similar areas now under irrigation the circumstances should be fully described).

(5) A summary estimate of annual income and expenses from the proposed irrigation enterprise. This should include a summary of all income and expense items normally anticiptated in an irrigation operation. (This showing may be supplemented by a statement of the County Extension Agent or other qualified persons familiar with the land and agricultural production in the area).

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